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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 10-Q**

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**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934**

For the quarterly period ended June 30, 2022

OR

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_  
Commission file number: 001-31262

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**ASBURY AUTOMOTIVE GROUP, INC.**  
(Exact name of Registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction of  
incorporation or organization)  
  
**2905 Premiere Parkway NW, Suite 300**  
**Duluth, Georgia**  
(Address of principal executive offices)

**01-0609375**  
(I.R.S. Employer  
Identification No.)

**30097**  
(Zip Code)

**(770) 418-8200**

(Registrant's telephone number, including area code)

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Securities registered pursuant to Section 12(b) of the Act:

| Title of each class                      | Trading<br>Symbol(s) | Name of each exchange on which registered |
|--|----------------------|---|
| Common stock, \$0.01 par value per share | ABG                  | New York Stock Exchange                   |

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act:

|                         |                                     |                           |
|-------------------------|-------------------------------------|---------------------------|
| Large Accelerated Filer | <input checked="" type="checkbox"/> | Accelerated Filer         |
| Non-Accelerated Filer   | <input type="checkbox"/>            | Smaller Reporting Company |
|                         |                                     | Emerging Growth Company   |

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If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.  0

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No  x

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date: The number of shares of common stock outstanding as of July 27, 2022 was 22,131,513.

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**PART I. FINANCIAL INFORMATION**

**Item 1. Condensed Consolidated Financial Statements**

**ASBURY AUTOMOTIVE GROUP, INC.  
CONDENSED CONSOLIDATED BALANCE SHEETS  
(In millions, except par value and share data)  
(Unaudited)**

|   | June 30, 2022 | December 31,<br>2021 |
|---|---------------|----------------------|
| <b>ASSETS</b>   |               |                      |
| <b>CURRENT ASSETS:</b>  |               |                      |
| Cash and cash equivalents   | \$ 100.1      | \$ 178.9             |
| Short-term investments  | 10.8          | 11.0                 |
| Contracts-in-transit  | 212.7         | 212.5                |
| Accounts receivable, net  | 176.6         | 229.8                |
| Inventories   | 783.2         | 718.4                |
| Assets held for sale  | 60.6          | 375.1                |
| Other current assets  | 257.5         | 203.7                |
| Total current assets  | 1,601.5       | 1,929.4              |
| INVESTMENTS   | 105.3         | 123.5                |
| PROPERTY AND EQUIPMENT, net   | 1,974.0       | 1,990.0              |
| OPERATING LEASE RIGHT-OF-USE ASSETS   | 246.1         | 261.0                |
| GOODWILL  | 2,230.8       | 2,271.7              |
| INTANGIBLE FRANCHISE RIGHTS   | 1,327.3       | 1,335.7              |
| DEFERRED INCOME TAXES, net of current portion   | 54.8          | 69.1                 |
| OTHER LONG-TERM ASSETS  | 99.0          | 22.2                 |
| Total assets  | \$ 7,638.8    | \$ 8,002.6           |
| <b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>   |               |                      |
| <b>CURRENT LIABILITIES:</b>   |               |                      |
| Floor plan notes payable—trade, net   | \$ 27.7       | \$ 37.3              |
| Floor plan notes payable—non-trade, net   | 16.7          | 527.2                |
| Current maturities of long-term debt  | 69.6          | 62.5                 |
| Current maturities of operating leases  | 24.4          | 25.8                 |
| Accounts payable and accrued liabilities  | 812.8         | 742.9                |
| Deferred revenue—current  | 201.2         | 181.5                |
| Liabilities associated with assets held for sale  | 4.5           | 20.8                 |
| Total current liabilities   | 1,156.9       | 1,598.0              |
| LONG-TERM DEBT  | 3,315.5       | 3,520.1              |
| OPERATING LEASE LIABILITIES   | 227.9         | 242.0                |
| DEFERRED REVENUE  | 476.0         | 466.3                |
| OTHER LONG-TERM LIABILITIES   | 52.1          | 60.7                 |
| COMMITMENTS AND CONTINGENCIES (Note 13)   |               |                      |
| <b>SHAREHOLDERS' EQUITY:</b>  |               |                      |
| Preferred stock, \$.01 par value; 10,000,000 shares authorized; none issued or outstanding  | —             | —                    |
| Common stock, \$.01 par value; 90,000,000 shares authorized; 44,100,010 and 45,052,293 shares issued, including shares held in treasury, respectively | 0.4           | 0.4                  |
| Additional paid-in capital  | 1,278.8       | 1,278.6              |
| Retained earnings   | 2,133.3       | 1,881.3              |
| Treasury stock, at cost; 21,968,497 and 21,914,251 shares, respectively   | (1,053.1)     | (1,044.1)            |
| Accumulated other comprehensive gain (loss)   | 51.0          | (0.7)                |
| Total shareholders' equity  | 2,410.4       | 2,115.5              |
| Total liabilities and shareholders' equity  | \$ 7,638.8    | \$ 8,002.6           |

See accompanying Notes to Condensed Consolidated Financial Statements

**ASBURY AUTOMOTIVE GROUP, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF INCOME**  
(In millions, except per share data)  
(Unaudited)

|   | For the Three Months Ended June<br>30, |                 | For the Six Months Ended June<br>30, |                 |
|---|--|-----------------|--------------------------------------|-----------------|
|   | 2022                                   | 2021            | 2022                                 | 2021            |
| <b>REVENUE:</b>                             |  |                 |                                      |                 |
| New vehicle                                 | \$ 1,864.5                             | \$ 1,368.4      | \$ 3,720.1                           | \$ 2,520.1      |
| Used vehicle                                | 1,362.5                                | 816.2           | 2,713.4                              | 1,507.1         |
| Parts and service                           | 520.2                                  | 292.4           | 1,022.1                              | 554.4           |
| Finance and insurance, net                  | 203.0                                  | 107.0           | 406.4                                | 195.3           |
| <b>TOTAL REVENUE</b>                        | <b>3,950.2</b>                         | <b>2,584.0</b>  | <b>7,862.0</b>                       | <b>4,776.9</b>  |
| <b>COST OF SALES:</b>                       |  |                 |                                      |                 |
| New vehicle                                 | 1,644.1                                | 1,244.3         | 3,275.7                              | 2,320.5         |
| Used vehicle                                | 1,258.3                                | 732.7           | 2,509.9                              | 1,367.8         |
| Parts and service                           | 229.8                                  | 109.8           | 455.2                                | 208.7           |
| Finance and insurance                       | 15.3                                   | —               | 26.5                                 | —               |
| <b>TOTAL COST OF SALES</b>                  | <b>3,147.5</b>                         | <b>2,086.8</b>  | <b>6,267.3</b>                       | <b>3,897.0</b>  |
| <b>GROSS PROFIT</b>                         | <b>802.7</b>                           | <b>497.2</b>    | <b>1,594.7</b>                       | <b>879.9</b>    |
| <b>OPERATING EXPENSES:</b>                  |  |                 |                                      |                 |
| Selling, general, and administrative        | 448.3                                  | 269.7           | 903.8                                | 509.5           |
| Depreciation and amortization               | 18.1                                   | 10.1            | 36.5                                 | 19.9            |
| Other operating expense (income), net       | 0.8                                    | (1.0)           | (1.9)                                | (4.2)           |
| <b>INCOME FROM OPERATIONS</b>               | <b>335.5</b>                           | <b>218.4</b>    | <b>656.3</b>                         | <b>354.7</b>    |
| <b>OTHER EXPENSES:</b>                      |  |                 |                                      |                 |
| Floor plan interest expense                 | 1.5                                    | 2.1             | 4.1                                  | 5.0             |
| Other interest expense, net                 | 37.6                                   | 14.4            | 75.2                                 | 28.4            |
| (Gain) loss on dealership divestitures, net | 28.7                                   | —               | (4.4)                                | —               |
| <b>Total other expenses, net</b>            | <b>67.8</b>                            | <b>16.5</b>     | <b>74.9</b>                          | <b>33.4</b>     |
| <b>INCOME BEFORE INCOME TAXES</b>           | <b>267.7</b>                           | <b>201.9</b>    | <b>581.4</b>                         | <b>321.3</b>    |
| Income tax expense                          | 66.3                                   | 49.8            | 142.3                                | 76.4            |
| <b>NET INCOME</b>                           | <b>\$ 201.4</b>                        | <b>\$ 152.1</b> | <b>\$ 439.1</b>                      | <b>\$ 244.9</b> |
| <b>EARNINGS PER SHARE:</b>                  |  |                 |                                      |                 |
| Basic—                                      |  |                 |                                      |                 |
| Net income                                  | \$ 9.11                                | \$ 7.88         | \$ 19.60                             | \$ 12.69        |
| Diluted—                                    |  |                 |                                      |                 |
| Net income                                  | \$ 9.07                                | \$ 7.80         | \$ 19.52                             | \$ 12.56        |
| <b>WEIGHTED AVERAGE SHARES OUTSTANDING:</b> |  |                 |                                      |                 |
| Basic                                       | 22.1                                   | 19.3            | 22.4                                 | 19.3            |
| Restricted stock                            | —                                      | 0.1             | —                                    | 0.1             |
| Performance share units                     | 0.1                                    | 0.1             | 0.1                                  | 0.1             |
| <b>Diluted</b>                              | <b>22.2</b>                            | <b>19.5</b>     | <b>22.5</b>                          | <b>19.5</b>     |

See accompanying Notes to Condensed Consolidated Financial Statements

**ASBURY AUTOMOTIVE GROUP, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**  
**(In millions)**  
**(Unaudited)**

|   | For the Three Months Ended June<br>30, |                 | For the Six Months Ended June<br>30, |                 |
|---|--|-----------------|--------------------------------------|-----------------|
|   | 2022                                   | 2021            | 2022                                 | 2021            |
| Net income  | \$ 201.4                               | \$ 152.1        | \$ 439.1                             | \$ 244.9        |
| Other comprehensive income:   |  |                 |                                      |                 |
| Change in fair value of cash flow swaps                               | 28.6                                   | (6.5)           | 70.9                                 | (0.3)           |
| Income tax (charge) benefit associated with cash flow swaps           | (6.9)                                  | 1.6             | (17.4)                               | —               |
| Change in accumulated losses on available-for-sale debt securities    | —                                      | —               | (2.1)                                | —               |
| Income tax benefit associated with available-for-sale debt securities | 0.2                                    | —               | 0.4                                  | —               |
| Comprehensive income  | <u>\$ 223.3</u>                        | <u>\$ 147.2</u> | <u>\$ 490.9</u>                      | <u>\$ 244.6</u> |

See accompanying Notes to Condensed Consolidated Financial Statements

**ASBURY AUTOMOTIVE GROUP, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY**  
(Dollars in millions)  
(Unaudited)

|   | Common Stock |        | Additional<br>Paid-in<br>Capital | Retained<br>Earnings | Treasury Stock |              | Accumulated<br>Other<br>Comprehensive<br>Income (Loss) | Total      |
|---|--------------|--------|----------------------------------|----------------------|----------------|--------------|--|------------|
|   | Shares       | Amount |                                  |                      | Shares         | Amount       |  |            |
| <b>Balances, December 31, 2021</b>  | 45,052,293   | \$ 0.4 | \$ 1,278.6                       | \$ 1,881.3           | 21,914,251     | \$ (1,044.1) | \$ (0.7)   | \$ 2,115.5 |
| Comprehensive Income:   |              |        |                                  |                      |                |              |  |            |
| Net income  | —            | —      | —                                | 237.7                | —              | —            | —  | 237.7      |
| Change in fair value of cash flow swaps,<br>net of reclassification adjustment and<br>\$10.4 tax charge | —            | —      | —                                | —                    | —              | —            | 31.8   | 31.8       |
| Loss on changes in fair value of debt<br>securities, net of \$0.2 tax benefit                           | —            | —      | —                                | —                    | —              | —            | (2.0)  | (2.0)      |
| Comprehensive income  | —            | —      | —                                | 237.7                | —              | —            | 29.8   | 267.5      |
| Share-based compensation  | —            | —      | 7.0                              | —                    | —              | —            | —  | 7.0        |
| Issuance of common stock, net of<br>forfeitures, in connection with share-based<br>payment arrangements | 115,435      | —      | —                                | —                    | —              | —            | —  | —          |
| Repurchase of common stock associated<br>with net share settlements of employee<br>share-based awards   | —            | —      | —                                | —                    | 53,810         | (8.9)        | —  | (8.9)      |
| Share issues (repurchases)  | —            | —      | 1.4                              | —                    | 1,069,203      | (200.0)      | —  | (198.6)    |
| Retirement of common stock  | (1,069,203)  | —      | (12.9)                           | (187.1)              | (1,069,203)    | 200.0        | —  | —          |
| <b>Balances, March 31, 2022</b>   | 44,098,525   | \$ 0.4 | \$ 1,274.1                       | \$ 1,931.9           | 21,968,061     | \$ (1,053.0) | \$ 29.1  | \$ 2,182.5 |
| Comprehensive Income:   |              |        |                                  |                      |                |              |  |            |
| Net income  | —            | —      | —                                | 201.4                | —              | —            | —  | 201.4      |
| Change in fair value of cash flow swaps,<br>net of reclassification adjustment and \$6.9<br>tax charge  | —            | —      | —                                | —                    | —              | —            | 21.7   | 21.7       |
| Changes in fair value of debt securities,<br>net of \$0.2 tax benefit                                   | —            | —      | —                                | —                    | —              | —            | 0.2  | 0.2        |
| Comprehensive income  | —            | —      | —                                | 201.4                | —              | —            | 21.9   | 223.3      |
| Share-based compensation  | —            | —      | 4.7                              | —                    | —              | —            | —  | 4.7        |
| Issuance of common stock, net of<br>forfeitures, in connection with share-based<br>payment arrangements | 1,485        | —      | —                                | —                    | —              | —            | —  | —          |
| Repurchase of common stock associated<br>with net share settlements of employee<br>share-based awards   | —            | —      | —                                | —                    | 436            | (0.1)        | —  | (0.1)      |
| <b>Balances, June 30, 2022</b>  | 44,100,010   | \$ 0.4 | \$ 1,278.8                       | \$ 2,133.3           | 21,968,497     | \$ (1,053.1) | \$ 51.0  | \$ 2,410.4 |

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|   | Common Stock |        | Additional<br>Paid-in<br>Capital | Retained<br>Earnings | Treasury Stock |              | Accumulated<br>Other<br>Comprehensive<br>Income (Loss) | Total      |
|---|--------------|--------|----------------------------------|----------------------|----------------|--------------|--|------------|
|   | Shares       | Amount |                                  |                      | Shares         | Amount       |  |            |
| <b>Balances, December 31, 2020</b>  | 41,133,668   | \$ 0.4 | \$ 595.5                         | \$ 1,348.9           | 21,848,314     | \$ (1,033.7) | \$ (5.6)   | \$ 905.5   |
| Comprehensive Income:   |              |        |                                  |                      |                |              |  |            |
| Net income  | —            | —      | —                                | 92.8                 | —              | —            | —  | 92.8       |
| Change in fair value of cash flow swaps,<br>net of reclassification adjustment and \$1.6<br>tax charge  | —            | —      | —                                | —                    | —              | —            | 4.6  | 4.6        |
| Comprehensive income  | —            | —      | —                                | 92.8                 | —              | —            | 4.6  | 97.4       |
| Share-based compensation  | —            | —      | 4.7                              | —                    | —              | —            | —  | 4.7        |
| Issuance of common stock, net of<br>forfeitures, in connection with share-based<br>payment arrangements | 115,881      | —      | —                                | —                    | —              | —            | —  | —          |
| Repurchase of common stock associated<br>with net share settlement of employee<br>share-based awards    | —            | —      | —                                | —                    | 61,893         | (9.6)        | —  | (9.6)      |
| <b>Balances, March 31, 2021</b>   | 41,249,549   | \$ 0.4 | \$ 600.2                         | \$ 1,441.7           | 21,910,207     | \$ (1,043.3) | \$ (1.0)   | \$ 998.0   |
| Comprehensive Income:   |              |        |                                  |                      |                |              |  |            |
| Net income  | —            | —      | —                                | 152.1                | —              | —            | —  | 152.1      |
| Change in fair value of cash flow swaps,<br>net of reclassification adjustment and \$1.6<br>tax benefit | —            | —      | —                                | —                    | —              | —            | (4.9)  | (4.9)      |
| Comprehensive income  | —            | —      | —                                | 152.1                | —              | —            | (4.9)  | 147.2      |
| Share-based compensation  | —            | —      | 3.7                              | —                    | —              | —            | —  | 3.7        |
| Issuance of common stock, net of<br>forfeitures in connection with share-based<br>payment arrangements  | 5,166        | —      | —                                | —                    | —              | —            | —  | —          |
| Repurchase of common stock associated<br>with net share settlement of employee<br>share-based awards    | —            | —      | —                                | —                    | 3,134          | (0.6)        | —  | (0.6)      |
| <b>Balances, June 30, 2021</b>  | 41,254,715   | \$ 0.4 | \$ 603.9                         | \$ 1,593.8           | 21,913,341     | \$ (1,043.9) | \$ (5.9)   | \$ 1,148.3 |

See accompanying Notes to Condensed Consolidated Financial Statements



**ASBURY AUTOMOTIVE GROUP, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In millions)  
(Unaudited)

|  | For the Six Months Ended June 30, |           |
|--|-----------------------------------|-----------|
|  | 2022                              | 2021      |
| <b>CASH FLOW FROM OPERATING ACTIVITIES:</b>  |                                   |           |
| Net income   | \$ 439.1                          | \$ 244.9  |
| Adjustments to reconcile net income to net cash provided by operating activities—  |                                   |           |
| Depreciation and amortization  | 36.5                              | 19.9      |
| Share-based compensation   | 11.7                              | 8.3       |
| Deferred income taxes  | (2.7)                             | —         |
| Unrealized losses on investments   | 12.0                              | —         |
| Amortization of debt securities discount/premium                                   | 0.6                               | —         |
| Loaner vehicle amortization  | 5.8                               | 12.5      |
| Gain on divestitures   | (4.4)                             | —         |
| Change in right-of-use assets  | 13.8                              | 11.1      |
| Other adjustments, net   | 0.5                               | (0.5)     |
| Changes in operating assets and liabilities, net of acquisitions and divestitures— |                                   |           |
| Contracts-in-transit   | (8.9)                             | 15.7      |
| Accounts receivable  | 45.2                              | 42.3      |
| Inventories  | 54.2                              | 424.6     |
| Other current assets   | (189.7)                           | (121.7)   |
| Floor plan notes payable—trade, net  | (9.6)                             | (51.0)    |
| Deferred revenue   | 29.4                              | —         |
| Accounts payable and accrued liabilities   | 82.5                              | (3.1)     |
| Operating lease liabilities  | (14.5)                            | (11.2)    |
| Other long-term assets and liabilities, net  | (4.9)                             | (4.5)     |
| Net cash provided by operating activities  | 496.6                             | 587.3     |
| <b>CASH FLOW FROM INVESTING ACTIVITIES:</b>  |                                   |           |
| Capital expenditures—excluding real estate   | (39.5)                            | (26.7)    |
| Capital expenditures—real estate   | —                                 | (5.5)     |
| Purchases of previously leased real estate   | —                                 | (217.1)   |
| Acquisitions   | —                                 | (1.0)     |
| Divestitures   | 379.7                             | —         |
| Purchases of debt securities—available-for-sale                                    | (25.9)                            | —         |
| Purchases of equity securities   | (8.4)                             | —         |
| Proceeds from the sale of debt securities—available-for-sale                       | 29.4                              | —         |
| Proceeds from the sale of equity securities  | 8.9                               | —         |
| Proceeds from the sale of assets   | —                                 | 21.5      |
| Net cash provided by (used in) investing activities                                | 344.2                             | (228.8)   |
| <b>CASH FLOW FROM FINANCING ACTIVITIES:</b>  |                                   |           |
| Floor plan borrowings—non-trade  | 3,618.4                           | 2,401.0   |
| Floor plan repayments—non-trade  | (4,115.4)                         | (2,808.9) |
| Floor plan repayments—divestitures   | (21.6)                            | —         |
| Proceeds from borrowings   | —                                 | 184.4     |
| Repayments of borrowings   | (24.1)                            | (23.9)    |
| Proceeds from revolving credit facility  | 330.0                             | —         |
| Repayments of revolving credit facility  | (499.0)                           | —         |
| Proceeds from issuance of common stock   | 1.4                               | —         |
| Payment of debt issuance costs   | (0.4)                             | —         |
| Purchases of treasury stock  | (200.0)                           | —         |

|   | For the Six Months Ended June 30, |                 |
|---|-----------------------------------|-----------------|
|   | 2022                              | 2021            |
| Repurchases of common stock, including amounts associated with net share settlements of employee share-based awards | (8.9)                             | (10.2)          |
| Net cash used in financing activities   | (919.6)                           | (257.6)         |
| Net (decrease) increase in cash and cash equivalents  | (78.8)                            | 100.9           |
| CASH AND CASH EQUIVALENTS, beginning of period  | 178.9                             | 1.4             |
| CASH AND CASH EQUIVALENTS, end of period  | <u>\$ 100.1</u>                   | <u>\$ 102.3</u> |

See Note 11 "Supplemental Cash Flow Information" for further details  
See accompanying Notes to Condensed Consolidated Financial Statements

**ASBURY AUTOMOTIVE GROUP, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
**(Unaudited)**

## **1. DESCRIPTION OF BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

Asbury Automotive Group, Inc., a Delaware corporation organized in 2002, is one of the largest automotive retailers in the United States. Our store operations are conducted by our subsidiaries.

As of June 30, 2022, we own and operated 198 new vehicle franchises, representing 31 brands of automobiles at 148 new vehicle dealership locations in 15 states. We also operated 34 collision centers, seven stand-alone used vehicle stores, one used vehicle wholesale business, one auto auction, and Total Care Auto, Powered by Landcar ("TCA"), a finance and insurance ("F&I") product provider. As of June 30, 2022, our new vehicle revenue brand mix consisted of 30% luxury, 40% imports and 30% domestic brands. Our stores offer an extensive range of automotive products and services, including new and used vehicles; parts and service, which includes repair and maintenance services, replacement parts and collision repair services (collectively referred to as "parts and services" or "P&S"); and F&I, including arranging vehicle financing through third parties and aftermarket products, such as extended service contracts, guaranteed asset protection ("GAP") debt cancellation and prepaid maintenance. The finance and insurance products are provided by independent third parties and TCA. The F&I products offered by TCA are primarily sold through Larry H. Miller Dealerships ("LHM"). As a result of the LHM Acquisition, the Company now reflects its operations in two reportable segments: Dealerships and TCA.

On December 17, 2021, the Company completed the acquisition of LHM, which included 54 new vehicle dealerships, seven used vehicle stores, 11 collision centers, a used vehicle wholesale business, the real property related thereto, and the entities comprising the F&I product provider, TCA, for a total purchase price of \$3.48 billion (the "LHM Acquisition"). The purchase price was financed through a combination of cash, debt, including senior notes, real estate facilities, new and used vehicle floor plan facilities and the proceeds from the issuance of common stock.

### *Basis of Presentation*

The accompanying Condensed Consolidated Financial Statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP"), and reflect the consolidated accounts of Asbury Automotive Group, Inc. (the "Company") and our wholly owned subsidiaries. All intercompany transactions have been eliminated in consolidation. If necessary, reclassifications of amounts previously reported have been made to the accompanying Condensed Consolidated Financial Statements in order to conform to current presentation.

In the opinion of management, all adjustments, consisting only of normal, recurring adjustments, considered necessary for a fair statement of the Condensed Consolidated Financial Statements as of June 30, 2022, and for the three and six months ended June 30, 2022 and 2021, have been included, unless otherwise indicated. The results of operations for the three and six months ended June 30, 2022 are not necessarily indicative of the results that may be expected for any other interim period, or any full year period. Our Condensed Consolidated Financial Statements should be read together with our audited Consolidated Financial Statements contained in our Annual Report on Form 10-K for the year ended December 31, 2021.

### *Use of Estimates*

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosures of contingent assets and liabilities as of the date of the financial statements, and the reported amounts of revenues and expenses during the periods presented. Actual results could differ materially from these estimates. Estimates and assumptions are reviewed quarterly and the effects of any revisions are reflected in the Consolidated Financial Statements in the period they are determined to be necessary. Significant estimates made in the accompanying Condensed Consolidated Financial Statements include, but are not limited to, those relating to inventory valuation reserves, reserves for chargebacks against revenue recognized from the sale of finance and insurance products, reserves for self-insurance programs, certain assumptions related to intangible and long-lived assets, and reserves for certain legal or similar proceedings relating to our business operations.

### *Cash and Cash Equivalents*

Cash and cash equivalents include investments in money market accounts and short-term certificates of deposit which have maturity dates of less than 90 days when purchased.

### *Restricted Cash and Securities*

TCA places securities on statutory deposit with certain state agencies to retain the right to do business in those states. Securities held on deposit with various state regulatory authorities had a fair value of \$2.7 million as of June 30, 2022.

### *Short-Term Investments*

Short-term investments consist of debt securities that are callable or have a maturity date within the next 12 months and are classified as current assets. Debt securities classified as short-term investments are designated as available-for-sale as management intends to hold these securities for indefinite periods of time or may sell the securities in response to changes in interest rates, prepayments, or other similar factors. Available-for-sale debt securities are reported at fair market value with any unrealized gain or loss, net of applicable income tax, reported in other comprehensive income, as a separate component of shareholders' equity. Premiums and discounts on debt securities classified as short-term investments are amortized or accreted using the effective interest method over the period from the purchase date to the expected maturity or call date of the related security and are reported in net income.

### *Investments*

Investments consist of available-for-sale debt securities, equity securities, and other investments. These securities are classified as non-current investments as they are not intended to fund current operations or have stated call dates or maturity dates beyond the next 12 months. Equity securities may consist of both preferred stock and common stock. Other investments consist of hedge funds and partnerships.

Debt securities classified as non-current investments are designated as available-for-sale as management intends to hold these securities for indefinite periods of time or may sell the securities in response to changes in interest rates, prepayments, or other similar factors. Available-for-sale debt securities included in non-current investments are reported at fair market value with any unrealized gain or loss, net of applicable income tax, reported in other comprehensive income, as a separate component of shareholders' equity. Premiums and discounts on debt securities included in non-current investments are amortized or accreted, as applicable, using the effective interest method over the period from the purchase date to the expected maturity or call date of the related security and are reported in net income.

Equity securities included in non-current investments are reported at fair market value with the change in value recognized in net income.

Other investments are measured at net asset value as a practical expedient with the net change in net asset value recognized in net income.

We review the debt securities portfolio at the security level on a quarterly basis for potential credit losses, which takes into consideration numerous factors. Some factors evaluated include changes in credit ratings, financial conditions of the issuer, recent payment activity, and other industry specific economic conditions. If a security is considered to have a potential credit loss, we compare the present value of expected cash flows to the amortized cost basis of the security to estimate the allowance for credit losses. The amount of the allowance is limited to the gross unrealized loss on an individual security. An unrealized loss on a debt security is generally considered to not be related to credit when the fair value of the security is below the carrying value of the security primarily due to changes in risk-free interest rates and when there has not been a significant deterioration in the financial condition of the issuer. If the Company no longer has the intent or ability to hold a security in an unrealized loss position until recovery of the security's cost basis, a loss is realized immediately in net income.

### *Contracts-In-Transit*

Contracts-in-transit represent receivables from third-party finance companies for the portion of new and used vehicle purchase price financed by customers through sources arranged by us.

### *Accounts Receivable*

The allowance for credit losses is estimated using an annual loss rate approach, by type of receivable, utilizing historical loss rates which have been adjusted for expectations of future economic conditions.

### *Acquisitions*

Acquisitions are accounted for under the acquisition method of accounting and the assets acquired and liabilities assumed are recorded at their fair value at the acquisition date. The results of operations of acquired dealerships and other businesses are included in the accompanying Consolidated Statements of Income, commencing on the date of acquisition.

### *Revenue Recognition*

We recognize revenue in accordance with ASC 606, Revenue from Contracts with Customers (Topic 606). Under that guidance, the transaction price is attributed to the underlying performance obligations in the contract and revenue is deferred and recognized as income as the Company satisfies the performance obligations in the contract. Incremental costs of obtaining a contract are capitalized and amortized to the extent that the Company expects to recover those costs. The Company satisfies performance obligations either over time or at a point in time as discussed in further detail below. Revenue is recognized at the time the related performance obligation is satisfied by transferring a promised good or performing a service to a customer. Sales and other taxes we collect, concurrent with revenue-producing activities, are excluded from revenue.

### *New vehicle and used vehicle retail*

Revenue from the sale of new and used vehicles is recognized when the terms of the customer contract are satisfied which generally occurs with the signing of the sales contract and transfer of control of the vehicle to the customer. Payment is generally received at the time of sale or from a third-party financial institution within a short period of time following the sale of the vehicle. Amounts due from third-party financial institutions are reflected in Contracts-in-transit or vehicle receivables within Accounts receivable, net on our Condensed Consolidated Balance Sheets. Costs associated with incidental items that are immaterial in the context of the contract are accrued at the time of sale.

### *Used vehicle wholesale*

Proceeds from the sale of these vehicles are recognized in used vehicle revenue upon transfer of control to end-users at auction.

### *Sale of vehicle parts and accessories*

The Company recognizes revenue upon transfer of control to the customer which occurs at a point in time. Payment is typically received when control of the parts and accessories transfers to the customer or within 30 days of such time. When the Company performs shipping and handling activities after the transfer of control to the customer (e.g., when control transfers prior to delivery), they are considered as fulfillment activities, and accordingly, the costs are accrued when the related revenue is recognized.

### *Vehicle repair and maintenance services*

The Company provides vehicle repair and maintenance services to its customers pursuant to the terms and conditions included within the customer contract ("repair order"). Payment for services are typically received upon completion of the services or within 30 days following the completion of the services. Certain of these services are provided by the Dealerships segment to TCA customers in connection with claims related to TCA's vehicle protection products. Revenues recorded by the Dealerships segment and the associated claims expenses recorded by the TCA segment are eliminated upon consolidation. Satisfaction of this performance obligation creates an asset with no alternative use for which an enforceable right to payment for performance to date exists within our contractual agreements. As such, the Company recognizes revenue over time as the Company satisfies its performance obligation. Additionally, the Company has determined that parts and labor are not individually distinct in the context of a repair order and therefore treated as a single performance obligation.

### *Finance and insurance, net*

Within the Dealerships segment, we receive commissions from third-party lending and insurance institutions for arranging customer financing and from the sale of vehicle service contracts, guaranteed asset protection debt cancellation, and other products, to end-users. In addition, we record commissions received from our TCA segment related to the sale of TCA's various vehicle protection F&I products. Finance and insurance commission revenue is recognized at the point of sale since our performance obligation is to arrange financing or facilitate the sale of a third-party's products or services to our customers.

The dealerships' commission arrangements with TCA, third-party lenders and insurance administrators consists of fixed ("upfront") and variable consideration. Variable consideration includes commission chargebacks ("chargebacks") in the event a contract is prepaid, defaulted upon, or terminated by the end-user. The Company reserves for future chargebacks based on historical chargeback experience and the termination provisions of the applicable contract, and these reserves are established in the same period that the related revenue is recognized. Commissions revenue and related reserves for future chargebacks in connection with the sale of TCA F&I products by our dealerships, are eliminated in consolidation.

We also participate in future profits pursuant to retrospective commission arrangements, which meet the definition of variable consideration, for certain insurance products associated with a third-party portfolio. The Company estimates the amount of variable consideration to be included in the transaction price based on historical payment trends and further

constrains the variable consideration such that it is probable a significant reversal of previously recognized revenue will not occur. In making these assessments the Company considers the likelihood and magnitude of a potential reversal of revenue and updates its assessment when uncertainties associated with the constraint are removed.

Within our TCA segment, all revenue, other than investment and interest income, is the result of contracts with customers. Each contract is considered to have a single performance obligation which extends over the life of the contract. Revenue is recognized ratably over the contract term based on earnings factors that align with the performance obligation. Expenses are matched with earned premiums resulting in recognition of profits over the life of the contracts. These expenses include the incremental costs incurred, primarily in the form of commissions, to obtain the contracts with customers. These commissions are primarily paid to affiliated dealerships and are therefore eliminated upon consolidation. Unearned premium reserves are established to cover the unexpired portion of premiums written.

#### *Deferred Revenue*

We earn and recognize premium revenue related to the TCA segment over the period of the related service contract. Accordingly, we record deferred revenue as we ratably recognize revenue over the service contract period.

#### *Internal Profit*

Revenues and expenses associated with internal work performed by our parts and service departments on new and used vehicle inventory are eliminated in consolidation. The gross profit earned by our parts and service departments for internal work performed is included as a reduction of Parts and Service Cost of Sales in the accompanying Condensed Consolidated Statements of Income upon the sale of the vehicle. The costs incurred by our new and used vehicle departments for work performed by our parts and service departments is included in either New Vehicle Cost of Sales or Used Vehicle Cost of Sales in the accompanying Condensed Consolidated Statements of Income, depending on the classification of the vehicle serviced. We eliminate the internal profit on vehicles that remain in inventory.

#### *Intersegment Elimination*

TCA's vehicle protection products are sold primarily through affiliated dealerships and the revenue from the related commissions are included in F&I revenue in the Dealership segment before consolidation. The corresponding claims expense incurred and the amortization of deferred acquisition costs is recorded as a cost of sales in the TCA segment. The Dealership segment also provides vehicle repair and maintenance services to TCA customers in connection with claims related to TCA's vehicle protection products. Revenues recorded by the Dealership segment and the associated claims expenses recorded by the TCA segment are eliminated upon consolidation. Intersegment revenues and profits from contracts and services are eliminated in consolidation. See Note 12 "Segment Information" for further details.

#### *Income Taxes*

We use the liability method to account for income taxes. Under this method, deferred tax assets and liabilities are recognized for the expected future tax consequences of differences between the carrying amounts of assets and liabilities and their respective tax basis using currently enacted tax rates.

#### *Share Repurchases*

Share repurchases may be made from time-to-time in open market transactions or through privately negotiated transactions under the authorization approved by the Board of Directors. Periodically, the Company may retire repurchased shares of common stock previously held by the Company as treasury stock. In accordance with our accounting policy, we allocate any excess share repurchase price over par value between additional paid-in capital, which is limited to amounts initially recorded for the same issue, and retained earnings. There were no shares repurchased during the three months ended June 30, 2022. During the six months ended June 30, 2022, the Company repurchased and retired 1,069,203 shares of our common stock under our share repurchase program.

#### *Earnings per Share*

Basic earnings per share is computed by dividing net income by the weighted-average common shares outstanding during the period. Diluted earnings per share is computed by dividing net income by the weighted-average common shares and common share equivalents outstanding during the period. The Company excluded 473 and 113 restricted share units and 18,339 and 12 performance share units issued under the Asbury Automotive Group, Inc. 2019 Equity and Incentive Compensation Plan from its computation of diluted earnings per share for the three months ended June 30, 2022 and 2021, respectively. During the six months ended June 30, 2022 and 2021, the Company excluded 1,669 and 904 restricted share units and 89 and 324 performance share units issued under the Asbury Automotive Group, Inc. 2019 Equity and Incentive Compensation Plan from

its computation of diluted earnings per share, respectively, because they were anti-dilutive. For all periods presented, there were no adjustments to the numerator necessary to compute diluted earnings per share.

#### *Assets Held for Sale and Liabilities Associated with Assets Held for Sale*

Certain amounts have been classified as Assets Held for Sale as of June 30, 2022 and December 31, 2021 in the accompanying Condensed Consolidated Balance Sheets. Assets and liabilities classified as held for sale include assets and liabilities associated with pending dealership disposals, real estate we are actively marketing to sell, and any related mortgage notes payable or other liabilities, if applicable. Classification as held for sale begins on the date that we have met all of the criteria for classification as held for sale.

At the time of classifying assets as held for sale, we compare the carrying value of these assets to estimates of fair value to assess for impairment. We compare the carrying value to estimates of fair value utilizing the assistance of third-party broker opinions of value and third-party desktop appraisals to assist in our fair value estimates related to real estate properties.

#### *Statements of Cash Flows*

Borrowings and repayments of floor plan notes payable through our senior secured credit agreement with Bank of America, as administrative agent, and the other agents and lenders party thereto (as amended, the "2019 Senior Credit Facility") and all floor plan notes payable relating to used vehicles (together referred to as "Floor Plan Notes Payable—Non-Trade"), are classified as financing activities in the accompanying Condensed Consolidated Statements of Cash Flows, with borrowings reflected separately from repayments. The net change in floor plan notes payable to a lender affiliated with the manufacturer from which we purchase a particular new vehicle (collectively referred to as "Floor Plan Notes Payable—Trade") is classified as an operating activity in the accompanying Condensed Consolidated Statements of Cash Flows. Borrowings of floor plan notes payable associated with inventory acquired in connection with all acquisitions and repayments made in connection with all divestitures are classified as a financing activity in the accompanying Condensed Consolidated Statements of Cash Flows. Cash flows related to floor plan notes payable included in operating activities differ from cash flows related to floor plan notes payable included in financing activities only to the extent that the former are payable to a lender affiliated with the manufacturer from which we purchased the related inventory, while the latter are payable to our 2019 Senior Credit Facility that includes lenders affiliated with the manufacturers and lenders not affiliated with the manufacturer from which we purchased the related inventory. The majority of our floor plan notes are payable to our 2019 Senior Credit Facility, with the exception of floor plan notes payable relating to the financing of new Ford and Lincoln vehicles.

Loaner vehicles account for a significant portion of Other current assets. We acquire loaner vehicles either with available cash or through borrowing from either our manufacturer affiliated lenders or through our 2019 Senior Credit Facility. Loaner vehicles are initially used by our service department for a short period of time (typically 6 to 12 months) before we seek to sell them. Therefore, we classify the acquisition of loaner vehicles in Other current assets and the borrowings and repayments of loaner vehicle notes payable in Accounts payable and accrued liabilities in the accompanying Condensed Consolidated Statements of Cash Flows. Loaner vehicles are depreciated over the service period to their estimated value. At the end of the loaner service period, loaner vehicles are transferred from Other current assets to used vehicle inventory. These transfers are reflected as non-cash transfers between Other current assets and Inventory in the accompanying Condensed Consolidated Statements of Cash Flows.

#### *Segment Reporting*

As of June 30, 2022, the Company had two reportable segments: (1) Dealerships and (2) TCA. Prior to the acquisition of TCA as part of the LHM Acquisition, we had one reportable segment as the geographic dealership groups are aggregated into one reportable segment. See Note 12 "Segment Information" for further details.

#### *Recent Accounting Pronouncements*

Effective October 1, 2021, the Company adopted Financial Accounting Standard Board ("FASB") Accounting Standards Update 2021-08, Accounting for Contract Assets and Contract Liabilities from Contracts with Customers, which requires an acquiring entity to apply ASC Topic 606 to recognize and measure contract assets acquired and contract liabilities assumed in a business combination. The Company applied ASC Topic 606 in recording contract assets acquired and contract liabilities assumed in business combinations that occurred in the quarter ended December 31, 2021. We assumed contract liabilities or deferred revenue of \$644.3 million in connection with the LHM Acquisition which closed in December 2021.

In March 2020, the FASB issued Accounting Standards Update 2020-04, Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting ("ASU 2020-04"). In January 2021, the FASB issued Accounting Standards Update No. 2021-01, Reference Rate Reform (Topic 848): Scope, which clarified the scope and application of the original guidance. The guidance in these standards apply to contract accounting, hedging relationships, and

other transactions affected by reference rate reform if certain criteria are met, and provides optional expedients and exceptions for a limited time to ease the potential burden in accounting for reference rate reform. The amendments apply only to contracts and hedging relationships that reference London Interbank Offered Rate ("LIBOR") or another reference rate expected to be discontinued due to reference rate reform. ASU 2020-04 is effective upon issuance and generally can be applied to applicable contract modifications through December 31, 2022. LIBOR benchmarking is utilized in our debt (including mortgages), revolving credit facilities, floorplan facilities, and interest rate swaps.

During the quarter ended June 30, 2022, we amended our LIBOR-based debt arrangements and related hedging financial instruments to revise their interest basis from LIBOR to a Secured Overnight Financing Rate ("SOFR"). See Note 9 "Debt" for further details. The impact of these proposed amendments to our debt arrangements and related interest rate swap derivative agreements, along with the adoption of the provisions from this standard, did not have a material impact on our Condensed Consolidated Financial Statements.

## 2. REVENUE RECOGNITION

### *Disaggregation of Revenue*

Revenue from contracts with customers for the three and six months ended June 30, 2022 and 2021 consists of the following:

|   | <b>For the Three Months Ended June 30,</b> |                   |
|---|--|-------------------|
|   | <b>2022</b>                                | <b>2021</b>       |
| <b>(In millions)</b>                    |  |                   |
| Revenue:                                |  |                   |
| New vehicle                             | \$ 1,864.5                                 | \$ 1,368.4        |
| Used vehicle retail                     | 1,272.8                                    | 759.4             |
| Used vehicle wholesale                  | 89.7                                       | 56.8              |
| New and used vehicle                    | 3,227.0                                    | 2,184.6           |
| Sale of vehicle parts and accessories   | 125.4                                      | 49.0              |
| Vehicle repair and maintenance services | 394.8                                      | 243.4             |
| Parts and services                      | 520.2                                      | 292.4             |
| Finance and insurance, net              | 203.0                                      | 107.0             |
| Total revenue                           | <u>\$ 3,950.2</u>                          | <u>\$ 2,584.0</u> |

|   | <b>For the Six Months Ended June 30,</b> |                   |
|---|--|-------------------|
|   | <b>2022</b>                              | <b>2021</b>       |
| <b>(In millions)</b>                    |  |                   |
| Revenue:                                |  |                   |
| New vehicle                             | \$ 3,720.1                               | \$ 2,520.1        |
| Used vehicle retail                     | 2,489.7                                  | 1,366.9           |
| Used vehicle wholesale                  | 223.7                                    | 140.2             |
| New and used vehicle                    | 6,433.5                                  | 4,027.2           |
| Sale of vehicle parts and accessories   | 255.6                                    | 91.8              |
| Vehicle repair and maintenance services | 766.5                                    | 462.6             |
| Parts and service                       | 1,022.1                                  | 554.4             |
| Finance and insurance, net              | 406.4                                    | 195.3             |
| Total revenue                           | <u>\$ 7,862.0</u>                        | <u>\$ 4,776.9</u> |

### *Contract Assets*

Changes in contract assets during the period are reflected in the table below. Contract assets related to vehicle repair and maintenance services are transferred to receivables when a repair order is completed and invoiced to the customer. Certain



incremental sales commissions payable to obtain an F&I revenue contract with a customer have been capitalized and are amortized using the same pattern of recognition applicable to the associated F&I revenue contract.

|  | Vehicle Repair and<br>Maintenance Services | Finance and<br>Insurance, net | Deferred Sales<br>Commissions | Total          |
|--|--|-------------------------------|-------------------------------|----------------|
|  | (In millions)                              |                               |                               |                |
| Balance as of January 1, 2022  | \$ 12.3                                    | \$ 13.5                       | \$ 1.4                        | \$ 27.2        |
| Transferred to receivables from contract assets recognized at the beginning of the period          | (12.3)                                     | (5.4)                         | —                             | (17.7)         |
| Amortization of costs to obtain a contract with a customer   | —  | —                             | (0.5)                         | (0.5)          |
| Costs incurred to obtain a contract with a customer  | —  | —                             | 10.0                          | 10.0           |
| Increases related to revenue recognized, inclusive of adjustments to constraint, during the period | 12.8                                       | 5.9                           | —                             | 18.7           |
| Balance as of March 31, 2022   | 12.8                                       | 14.0                          | 10.9                          | 37.7           |
| Transferred to receivables from contract assets recognized at the beginning of the period          | (12.8)                                     | (4.3)                         | —                             | (17.1)         |
| Amortization of costs to obtain a contract with a customer   | —  | —                             | (0.9)                         | (0.9)          |
| Costs incurred to obtain a contract with a customer  | —  | —                             | 10.1                          | 10.1           |
| Increases related to revenue recognized, inclusive of adjustments to constraint, during the period | 13.4                                       | 5.0                           | —                             | 18.4           |
| Balance as of June 30, 2022  | <u>\$ 13.4</u>                             | <u>\$ 14.7</u>                | <u>\$ 20.1</u>                | <u>\$ 48.2</u> |

#### Deferred Revenue

The Company acquired \$644.3 million in Deferred revenue as part of the LHM Acquisition in December 2021. The Condensed Consolidated Balance Sheets reflect \$677.2 million and \$647.8 million as of June 30, 2022 and December 31, 2021, respectively. Approximately \$108.0 million of Deferred revenue at December 31, 2021 was recorded in Finance and insurance, net revenue in the Condensed Consolidated Statements of Income during the six months ended June 30, 2022.

### 3. ACQUISITIONS AND DIVESTITURES

Results of acquired businesses, which are primarily dealerships, are included in our accompanying Condensed Consolidated Statements of Income commencing on the date of acquisition. Our acquisitions are accounted for such that the assets acquired and liabilities assumed are recognized at their acquisition date fair values, with any excess of the consideration transferred over the estimated fair values of the identifiable net assets acquired recorded as goodwill. Goodwill is an asset representing operational synergies and future economic benefits arising from other assets acquired in a business combination that are not individually identified and separately recognized. Upon the completion of purchase accounting, the fair value of our manufacturer franchise rights are determined as of the acquisition date, by discounting the projected cash flows specific to each franchise. Included in this analysis are market participant assumptions related to the cash flows directly attributable to the franchise rights, including year-over-year and terminal growth rates, working capital requirements, weighted average cost of capital, future gross margins, and future selling, general, and administrative expenses.

#### LHM Acquisition

On December 17, 2021, we completed the acquisition of the equity interests of, and the real property related to the businesses of the Larry H. Miller Dealerships and the Total Care Auto, Powered by Landcar business. The acquisition diversifies Asbury's geographic mix, with entry into six Western states; Arizona, Utah, New Mexico, Idaho, California and Washington, and adds to the Company's growing Colorado presence.

As a result of the LHM Acquisition, we acquired 54 new vehicle dealerships, seven used vehicle stores, 11 collision centers, a used vehicle wholesale business, the real property related thereto, and the entities comprising the TCA Business for a total purchase price of approximately \$3.48 billion. The preliminary purchase price was paid in cash.

The sources of the preliminary purchase consideration are as follows:

|  | <b>(In millions)</b> |
|--|----------------------|
| Cash, net of cash acquired                       | \$ 195.              |
| Common stock offering                            | 666.                 |
| Senior notes                                     | 1,578.               |
| Real estate facility                             | 513.                 |
| New vehicle floor plan facility                  | 183.                 |
| Used vehicle floor plan facility                 | 51.                  |
| Payable to sellers                               | 6.                   |
| Preliminary purchase price, net of cash acquired | <u>\$ 3,193.</u>     |

Under the acquisition method of accounting, the tangible and intangible assets acquired and liabilities assumed are recorded at their estimated fair value based on information currently available. The following table summarizes the amounts recorded based on preliminary estimates of fair value:

|   | <b>(In millions)</b> |
|---|----------------------|
| <b>Summary of Assets Acquired and Liabilities Assumed</b> |                      |
| <b>Assets</b>   |                      |
| Cash and cash equivalents                                 | \$ 287.4             |
| Investments   | 133.5                |
| Contracts-in-transit, net                                 | 99.5                 |
| Accounts receivable, net                                  | 110.0                |
| Inventories, net  | 282.1                |
| Other current assets                                      | 25.4                 |
| Total current assets                                      | 937.9                |
| Property and equipment, net                               | 792.6                |
| Goodwill  | 1,642.2              |
| Intangible franchise rights                               | 870.0                |
| Operating lease right-of-use assets                       | 34.1                 |
| Deferred income taxes                                     | 136.5                |
| Other long-term assets                                    | 5.6                  |
| Total assets acquired                                     | <u>4,418.9</u>       |
| <b>Liabilities</b>  |                      |
| Accounts payable and accrued liabilities                  | 234.0                |
| Operating lease liabilities                               | 34.1                 |
| Deferred revenue  | 644.3                |
| Other long-term liabilities                               | 25.2                 |
| Total liabilities assumed                                 | <u>937.6</u>         |
| <b>Net assets acquired</b>                                | <u>\$ 3,481.3</u>    |

The preliminary acquisition accounting is based upon the Company's estimates of fair value. The estimated fair values of the assets acquired and liabilities assumed and the related preliminary acquisition accounting are based on management's estimates and assumptions, as well as other information compiled by management, including the books and records of Larry H. Miller. Our estimates and assumptions are subject to change during the measurement period, not to exceed one year from the acquisition date. The areas of acquisition accounting that are not yet finalized primarily relate to the following significant items: (i) finalizing the review and valuation of land, land improvements, buildings and non-real property and equipment (including the models, key assumptions, estimates and inputs used) and assignment of remaining useful lives associated with the

depreciable assets, (ii) finalizing the review and valuation of manufacturer franchise rights (including key assumptions, inputs and estimates), (iii) finalizing the review of the actuarial inputs to the value of business added intangible asset for TCA, (iv) finalizing the valuation of certain in-place contracts or contractual relationships (including but not limited to leases), including determining the appropriate amortization period, (v) finalizing our review of certain assets acquired and liabilities assumed, (vi) finalizing the evaluation and valuation of certain legal matters and/or other loss contingencies, including those that we may not yet be aware of but meet the requirement to qualify as a pre-acquisition contingency, and (vii) finalizing our estimate of the impact of acquisition accounting on deferred income taxes or liabilities. As the initial acquisition accounting is based on our preliminary assessments, actual values may differ (possibly materially) from our current estimates when final information becomes available. Additionally, the total consideration transferred is subject to certain post-close adjustments. We believe that the information gathered to date provides a reasonable basis for estimating the preliminary fair values of assets acquired and liabilities assumed. We will continue to evaluate these items until they are satisfactorily resolved and adjust our acquisition accounting accordingly, within the allowable measurement period.

The Company's Condensed Consolidated Statements of Income included revenue attributable to LHM Acquisition for the six months ended June 30, 2022 of \$2.82 billion.

#### Other Acquisitions and Divestitures

There were no acquisitions during the six months ended June 30, 2022 and 2021.

During the six months ended June 30, 2022, we sold one franchise (one dealership location) in St. Louis, Missouri, three franchises (three dealership locations) and one collision center in Denver, Colorado, two franchises (two dealership locations) in Spokane, Washington and one franchise (one dealership location) in Albuquerque, New Mexico. The Company recorded a pre-tax gain totaling \$4.4 million during the six months ended June 30, 2022, which is presented in our accompanying Condensed Consolidated Statements of Income as (Gain) loss on dealership divestitures, net. The gain or loss on dealership divestitures related to the six dealerships divested in the Denver, Colorado, Spokane, Washington and Albuquerque, New Mexico markets is preliminary, pending final purchase accounting entries in connection with the Larry H. Miller acquisition. None of the divested businesses would be considered significant subsidiaries as defined in Rule 1-02(w) of Regulation S-X.

We did not divest any dealerships during the six months ended June 30, 2021; however, we did release \$1.0 million of purchase price holdbacks related to a prior year acquisition.

#### 4. ACCOUNTS RECEIVABLE

Accounts receivable consisted of the following:

|                                  | As of         |                   |
|----------------------------------|---------------|-------------------|
|                                  | June 30, 2022 | December 31, 2021 |
|                                  | (In millions) |                   |
| Vehicle receivables              | \$ 47.3       | \$ 73.1           |
| Manufacturer receivables         | 38.4          | 44.0              |
| Other receivables                | 92.9          | 114.3             |
| Total accounts receivable        | 178.6         | 231.4             |
| Less—Allowance for credit losses | (2.0)         | (1.6)             |
| Accounts receivable, net         | \$ 176.6      | \$ 229.8          |

## 5. INVENTORIES

Inventories consisted of the following:

|                            | As of           |                   |
|----------------------------|-----------------|-------------------|
|                            | June 30, 2022   | December 31, 2021 |
| (In millions)              |                 |                   |
| New vehicles               | \$ 237.5        | \$ 206.5          |
| Used vehicles              | 424.8           | 402.0             |
| Parts and accessories      | 120.9           | 109.9             |
| Total inventories, net (a) | <u>\$ 783.2</u> | <u>\$ 718.4</u>   |

(a) Amounts reflected for inventory as of June 30, 2022 and December 31, 2021, excluded \$5.6 million and \$24.1 million classified as Assets held for sale, respectively.

The lower of cost and net realizable value reserves reduced total inventories by \$8.2 million and \$7.7 million as of June 30, 2022 and December 31, 2021, respectively. As of June 30, 2022 and December 31, 2021, certain automobile manufacturer incentives reduced new vehicle inventory cost by \$1.2 million and \$1.2 million, respectively, and reduced new vehicle cost of sales for the six months ended June 30, 2022 and 2021 by \$48.8 million and \$31.3 million, respectively.

## 6. ASSETS AND LIABILITIES HELD FOR SALE

Assets and liabilities classified as held for sale include (i) assets and liabilities associated with pending dealership disposals, (ii) real estate not currently used in our operations that we are actively marketing to sell and (iii) the related mortgage notes payable, if applicable.

A summary of assets held for sale and liabilities associated with assets held for sale is as follows:

|  | As of          |                   |
|--|----------------|-------------------|
|  | June 30, 2022  | December 31, 2021 |
| (In millions)  |                |                   |
| <b>Assets:</b>   |                |                   |
| Inventory  | \$ 5.6         | \$ 24.1           |
| Loaner vehicles  | 1.0            | 4.6               |
| Property and equipment, net                            | 38.8           | 110.8             |
| Operating lease right-of-use assets                    | 0.2            | 7.1               |
| Goodwill   | 8.2            | 118.5             |
| Intangible franchise rights                            | 6.8            | 110.0             |
| Total assets held for sale                             | <u>60.6</u>    | <u>375.1</u>      |
| <b>Liabilities:</b>                                    |                |                   |
| Floor plan notes payable—non-trade                     | 1.1            | 9.1               |
| Loaner vehicles payable                                | 0.4            | 4.6               |
| Current maturities of long-term debt                   | 0.2            | —                 |
| Current maturities of operating leases                 | —              | 2.7               |
| Long-term debt   | 2.6            | —                 |
| Operating lease liabilities                            | 0.2            | 4.4               |
| Total liabilities associated with assets held for sale | <u>4.5</u>     | <u>20.8</u>       |
| Net assets held for sale                               | <u>\$ 56.1</u> | <u>\$ 354.3</u>   |

As of June 30, 2022, assets held for sale consisted of two franchises (two dealership locations) in addition to one real estate property not currently used in our operations. Assets and liabilities associated with these dealerships and properties totaled \$60.6 million and \$4.5 million respectively.

As of December 31, 2021, assets held for sale consisted of eight franchises (eight dealership locations) in addition to one real estate property not currently used in our operations. Assets and liabilities associated with these dealerships and property totaled \$375.1 million and \$20.8 million, respectively.

During the six months ended June 30, 2022, the Company sold seven franchises (seven dealership locations) and one collision center for a pre-tax gain totaling \$4.4 million.

During the six months ended June 30, 2021, the Company sold two vacant properties with a net book value of \$12.5 million.

## 7. INVESTMENTS

The acquisition of TCA included an investment portfolio funded primarily by product premiums. The amortized cost, gross unrealized gains and losses and estimated fair values of debt securities available-for-sale, equity securities, and other investments measured at net asset value are as follows:

|   | As of June 30, 2022 |                        |                         |            |
|---|---------------------|------------------------|-------------------------|------------|
|   | Amortized Cost      | Gross Unrealized Gains | Gross Unrealized Losses | Fair Value |
|   | (In millions)       |                        |                         |            |
| Short-term investments                        | \$ 10.8             | \$ —                   | \$ —                    | \$ 10.8    |
| U.S. Treasury                                 | 6.3                 | —                      | (0.2)                   | 6.1        |
| Municipal                                     | 29.8                | —                      | (0.8)                   | 29.0       |
| Corporate                                     | 11.9                | —                      | (0.7)                   | 11.2       |
| Mortgage and other asset-backed securities    | 4.9                 | —                      | (0.2)                   | 4.7        |
| Total debt securities                         | 63.7                | —                      | (1.9)                   | 61.8       |
| Common stock                                  | 52.9                | —                      | —                       | 52.9       |
| Other investments measured at net asset value | 1.4                 | —                      | —                       | 1.4        |
| Total investments                             | \$ 118.0            | \$ —                   | \$ (1.9)                | \$ 116.1   |

|   | As of December 31, 2021 |                        |                         |            |
|---|-------------------------|------------------------|-------------------------|------------|
|   | Amortized Cost          | Gross Unrealized Gains | Gross Unrealized Losses | Fair Value |
|   | (In millions)           |                        |                         |            |
| Short-term investments                        | \$ 11.0                 | \$ —                   | \$ —                    | \$ 11.0    |
| U.S. Treasury                                 | 7.5                     | —                      | (0.1)                   | 7.4        |
| Municipal                                     | 27.9                    | 0.4                    | (0.1)                   | 28.2       |
| Corporate                                     | 9.5                     | 0.1                    | (0.1)                   | 9.5        |
| Mortgage and other asset-backed securities    | 8.8                     | 0.1                    | (0.1)                   | 8.8        |
| Total debt securities                         | 64.7                    | 0.6                    | (0.4)                   | 64.9       |
| Common stock                                  | 65.2                    | —                      | —                       | 65.2       |
| Other investments measured at net asset value | 4.4                     | —                      | —                       | 4.4        |
| Total investments                             | \$ 134.3                | \$ 0.6                 | \$ (0.4)                | \$ 134.5   |

As of June 30, 2022 and December 31, 2021, the Company had \$0.7 million and \$0.6 million of accrued interest receivable, which is included in Other current assets on the Condensed Consolidated Balance Sheets. The Company does not consider accrued interest receivable in the carrying amount of financial assets held at amortized cost basis or in the allowance for credit losses calculation. As of June 30, 2022 and December 31, 2021, the Company did not have any allowance for credit losses.

A summary of amortized costs and fair value of investments by time to maturity, is as follows:

|   | As of June 30, 2022 |            |
|---|---------------------|------------|
|   | Amortized Cost      | Fair Value |
|   | (In millions)       |            |
| Due in 1 year or less                         | \$ 10.8             | \$ 10.8    |
| Due in 1-5 years                              | 46.3                | 44.6       |
| Due in 5-10 years                             | 1.7                 | 1.7        |
| Due after 10 years                            | —                   | —          |
| Total by maturity                             | 58.8                | 57.1       |
| Mortgage and other asset-backed securities    | 4.9                 | 4.7        |
| Common stock                                  | 52.9                | 52.9       |
| Preferred stock                               | —                   | —          |
| Other investments measured at net asset value | 1.4                 | 1.4        |
| Total investment securities                   | \$ 118.0            | \$ 116.1   |

There were no gross gains and \$0.5 million gross losses realized related to the sale of available-for-sale debt securities carried at fair value for the three months ended June 30, 2022. Gross gains and gross losses realized related to the sale of equity securities carried at fair value for the three months ended June 30, 2022 were \$1.4 million and \$1.0 million respectively.

The following tables summarize the amount of unrealized losses, defined as the amount by which the amortized cost exceeds fair value, and the related fair value of investments with unrealized losses as of June 30, 2022 and December 31, 2021. The investments were segregated into two categories: those that have been in a continuous unrealized loss position for less than 12 months and those that have been in a continuous unrealized loss position for 12 or more months. The reference point for determining how long an investment was in an unrealized loss position was June 30, 2022. All investments were acquired in the LHM Acquisition on or after December 17, 2021, thus there are no unrealized losses greater than 12 months at June 30, 2022 or at December 31, 2021.

|  | As of June 30, 2022 |                   |                        |                   |            |                   |
|--|---------------------|-------------------|------------------------|-------------------|------------|-------------------|
|  | Less than 12 Months |                   | Greater than 12 Months |                   | Total      |                   |
|  | Fair Value          | Unrealized Losses | Fair Value             | Unrealized Losses | Fair Value | Unrealized Losses |
|  | (In millions)       |                   |                        |                   |            |                   |
| U.S Treasury                               | \$ 6.0              | \$ (0.2)          | \$ —                   | \$ —              | \$ 6.0     | \$ (0.2)          |
| Municipal                                  | 20.7                | (0.8)             | —                      | —                 | 20.7       | (0.8)             |
| Corporate                                  | 11.1                | (0.7)             | —                      | —                 | 11.1       | (0.7)             |
| Mortgage and other asset-backed securities | 4.7                 | (0.2)             | —                      | —                 | 4.7        | (0.2)             |
| Total debt securities                      | \$ 42.5             | \$ (1.9)          | \$ —                   | \$ —              | \$ 42.5    | \$ (1.9)          |

|  | As of December 31, 2021 |                   |                        |                   |            |                   |
|--|-------------------------|-------------------|------------------------|-------------------|------------|-------------------|
|  | Less than 12 Months     |                   | Greater than 12 Months |                   | Total      |                   |
|  | Fair Value              | Unrealized Losses | Fair Value             | Unrealized Losses | Fair Value | Unrealized Losses |
|  | (In millions)           |                   |                        |                   |            |                   |
| U.S Treasury                               | 7.1                     | (0.1)             | —                      | —                 | 7.1        | (0.1)             |
| Municipal                                  | 10.0                    | (0.1)             | —                      | —                 | 10.0       | (0.1)             |
| Corporate                                  | 6.4                     | (0.1)             | —                      | —                 | 6.4        | (0.1)             |
| Mortgage and other asset-backed securities | 5.8                     | (0.1)             | —                      | —                 | 5.8        | (0.1)             |
| Total debt securities                      | \$ 29.3                 | \$ (0.4)          | \$ —                   | \$ —              | \$ 29.3    | \$ (0.4)          |

On January 1, 2020, the Company adopted the amendments within ASU 2016-13, which replaced the legacy GAAP other-than-temporary impairment (“OTTI”) model with a credit loss model. The credit loss model under ASC 326-30, applicable to the available-for-sale debt securities, requires the recognition of credit losses through an allowance account, but retains the concept from the OTTI model that credit losses are recognized once securities become impaired. The Company reviews the investment securities portfolio at the security level on a quarterly basis for potential credit losses, which takes into consideration numerous factors as described in Note 1. The decline in fair value identified in the tables above are a result of widening market spreads and not a result of credit quality. Additionally, the Company has determined it has both the intent and ability to hold these investments until the market price recovers or until maturity and does not believe it will be required to sell the securities before maturity. Accordingly, no credit losses were recognized on these securities during the three and six months ended June 30, 2022.

## 8. FLOOR PLAN NOTES PAYABLE

Floor plan notes payable consisted of the following:

|  | As of         |                   |
|--|---------------|-------------------|
|  | June 30, 2022 | December 31, 2021 |
|  | (In millions) |                   |
| Floor plan notes payable—trade             | \$ 31.7       | \$ 39.3           |
| Floor plan notes payable offset account    | (4.0)         | (2.0)             |
| Floor plan notes payable—trade, net        | \$ 27.7       | \$ 37.3           |
| <br>                                       |               |                   |
| Floor plan notes payable—new non-trade (a) | \$ 317.0      | \$ 314.7          |
| Floor plan notes payable—used non-trade    | —             | 294.0             |
| Floor plan notes payable offset account    | (300.3)       | (81.5)            |
| Floor plan notes payable—non-trade, net    | \$ 16.7       | \$ 527.2          |

(a) Amounts reflected for Floor plan notes payable—new non-trade as of June 30, 2022 and December 31, 2021, excluded \$1.1 million and \$9.1 million classified as Liabilities associated with assets held for sale, respectively.

We have a floor plan facility with Ford Motor Credit Company (“Ford Credit”) to purchase new Ford and Lincoln vehicle inventory. We have established a floor plan notes payable offset account with Ford Credit that allows us to transfer cash to the account as an offset to our outstanding Floor Plan Notes Payable—Trade. Our floor plan facility with Ford Credit was amended in July 2020 and can be terminated by either the Company or Ford Credit with a 30-day notice period.

In addition, we have a similar floor plan offset account with Bank of America that allows us to offset our Floor Plan Notes Payable—Non-Trade. These accounts allow us to transfer cash to reduce the amount of outstanding floor plan notes payable that would otherwise accrue interest, while retaining the ability to transfer amounts from the offset account into our operating cash accounts within the same day. As of June 30, 2022 and December 31, 2021, we had \$304.3 million and \$83.5 million, respectively, in these floor plan offset accounts.

We have the ability to convert a portion of our availability under the Revolving Credit Facility to the New Vehicle Floor Plan Facility or the Used Vehicle Floor Plan Facility. The maximum amount we are allowed to convert is determined based on our aggregate revolving commitment under the Revolving Credit Facility, less \$50.0 million. In addition, we are able to convert any amounts moved to the New Vehicle Floor Plan Facility or Used Vehicle Floor Plan Facility back to the Revolving Credit Facility.

On May 25, 2022, we and certain of our subsidiaries, as applicable, entered into an amendment to our 2019 Syndicated Revolving Credit Facility to revise the benchmark reference rate of LIBOR to SOFR applicable to interest payable under the New Vehicle Floor Plan Facility and the Used Vehicle Floor Plan Facility. See Note 9 “Debt” for further details of the revisions to the applicable facility.

On May 27, 2022, \$389.0 million of our availability under the Revolving Credit Facility was re-designated to the New Vehicle Floor Plan Facility to take advantage of lower commitment fee rates.

## 9. DEBT

Long-term debt consisted of the following:

|   | As of             |                   |
|---|-------------------|-------------------|
|   | June 30, 2022     | December 31, 2021 |
|   | (In millions)     |                   |
| 4.50% Senior Notes due 2028   | \$ 405.0          | \$ 405.0          |
| 4.625% Senior Notes due 2029  | 800.0             | 800.0             |
| 4.75% Senior Notes due 2030   | 445.0             | 445.0             |
| 5.00% Senior Notes due 2032   | 600.0             | 600.0             |
| Mortgage notes payable bearing interest at fixed rates (a)          | 66.2              | 71.7              |
| 2021 Real Estate Facility   | 677.9             | 689.7             |
| 2021 BofA Real Estate Facility                                      | 177.0             | 180.7             |
| 2018 Bank of America Facility                                       | 76.1              | 78.8              |
| 2018 Wells Fargo Master Loan Facility                               | 79.4              | 81.9              |
| 2013 BofA Real Estate Facility                                      | 29.8              | 31.1              |
| 2015 Wells Fargo Master Loan Facility                               | 50.7              | 53.2              |
| 2019 Syndicated Revolving Credit Facility                           | —                 | 169.0             |
| Finance lease liability   | 8.4               | 8.4               |
| Total debt outstanding  | 3,415.5           | 3,614.5           |
| Add—unamortized premium on 4.50% Senior Notes due 2028              | 0.9               | 1.0               |
| Add—unamortized premium on 4.75% Senior Notes due 2030              | 1.7               | 1.8               |
| Less—debt issuance costs  | (33.0)            | (34.7)            |
| Long-term debt, including current portion                           | 3,385.1           | 3,582.6           |
| Less—current portion, net of current portion of debt issuance costs | (69.6)            | (62.5)            |
| Long-term debt  | <u>\$ 3,315.5</u> | <u>\$ 3,520.1</u> |

(a) Amounts reflected for the Mortgage notes payable as of June 30, 2022, exclude \$2.8 million classified as Liabilities associated with assets held for sale.

During the quarter ended June 30, 2022, we and certain of our subsidiaries, as applicable entered into amendments to our 2019 Syndicated Revolving Credit Facility and certain real estate loan agreements to replace the benchmark reference rate of LIBOR to SOFR as published by the Federal Reserve Bank of New York. All LIBOR-based debt arrangements have now been amended to replace LIBOR benchmark rates with SOFR benchmark rates, effective June 1, 2022. Details of these changes are outlined below.

### 2019 Senior Credit Facility

On May 25, 2022, the Company and certain of its subsidiaries entered into the fourth amendment to the 2019 third amended and restated credit agreement with Bank of America, as administrative agent, and the other lenders party thereto (the "2019 Senior Credit Facility"). The fourth amendment revised the benchmark reference rate from one-month LIBOR to SOFR. Borrowings under the 2019 Senior Credit Facility bear interest, at our option, based on Daily Simple SOFR, as defined withing the agreement, or the Base Rate, in each case, plus an Applicable Rate. The Base Rate is the highest of (i) the Federal Funds Rate plus 0.50%, (ii) the Bank of America prime rate, (iii) SOFR plus 0.10%, plus 1.00%, and (iv) 1.00%. Applicable Rate means with respect to the revolving credit facility under the 2019 Senior Credit Facility, a range from 1.00% to 2.00% for Daily Simple SOFR loans and 0.15% to 1.00% for Base Rate loans, in each case based on the Company's consolidated total lease adjusted leverage ratio. Borrowings under the new vehicle floorplan facility under the 2019 Senior Credit Facility bear interest, at our option, based on SOFR plus 0.10%, plus 1.10% or the Base Rate plus 0.10%. Borrowings under the used vehicle floorplan facility under the 2019 Senior Credit Facility bear interest, at our option, based on SOFR plus 0.10%, plus 1.40% or the Base Rate plus 0.40%.



*2021 BofA Real Estate Facility*

On May 25, 2022, we entered into the second amendment to the credit agreement to, among other things, revise the benchmark interest rate payable on term loans under our 2021 BofA Real Estate Facility. Interest is payable, at our option, based on (1) SOFR plus 0.10%, plus 1.65% per annum or (2) the Base Rate (as described below) plus 0.65% per annum. The Base Rate is the highest of (i) the Federal Funds rate plus 0.50%, (ii) the Bank of America prime rate, (iii) SOFR plus 0.10%, plus 1.00%, and (iv) 1.00%.

*2018 Wells Fargo Master Loan Facility*

On June 1, 2022, certain of our subsidiaries entered into the Second Amendment to the master loan agreement which revised interest payable from a LIBOR reference rate to SOFR plus 0.10%, plus an applicable margin based on a pricing grid ranging from 1.50% to 1.85% per annum based on our consolidated total lease adjusted leverage ratio.

*2018 BofA Real Estate Facility*

On May 25, 2022, we entered into the third amendment to the credit agreement to revise the benchmark interest rate payable on term loans under our 2018 BofA Real Estate Facility. Interest is payable, at our option, based on SOFR plus 0.10%, plus 1.50% or the Base Rate (as described below) plus 0.50%. The Base Rate is the highest of (i) the Federal Funds rate plus 0.50%, (ii) the Bank of America prime rate, (iii) SOFR plus 0.10%, plus 1.00%, and (iv) 1.00%.

*2015 Wells Fargo Master Loan Facility*

On June 1, 2022, certain of our subsidiaries entered into the Second Amendment to the master loan agreement which revised interest payable from a LIBOR reference rate to SOFR plus 0.10%, plus 1.85% per annum.

*2013 BofA Real Estate Facility*

On May 25, 2022, we entered into the third amendment to the credit agreement to revise the benchmark interest rate payable on term loans under our 2013 BofA Real Estate Facility. Interest is payable, at our option, based on SOFR plus 0.10%, plus 1.50% or the Base Rate (as described below) plus 0.50%. The Base Rate is the highest of (i) the Federal Funds rate plus 0.50%, (ii) the Bank of America prime rate, (iii) SOFR plus 0.10%, plus 1.00%, and (iv) 1.00%. Our right to make draws under the 2013 BofA Real Estate Facility terminated on December 26, 2013.

We are a holding company with no independent assets or operations. For all relevant periods presented, our 2028 Notes and 2030 Notes have been fully and unconditionally guaranteed, on a joint and several basis, by substantially all of our subsidiaries other than Landcar Administration Company, Landcar Agency, Inc., and Landcar Casualty Company (collectively, the "TCA Non-Guarantor Subsidiaries").

**10. FINANCIAL INSTRUMENTS AND FAIR VALUE**

In determining fair value, we use various valuation approaches, including market and income approaches. Accounting standards establish a hierarchy for inputs used in measuring fair value that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that the most observable inputs be used when available. Observable inputs are inputs that market participants would use in pricing the asset or liability developed based on market data obtained from independent sources. Unobservable inputs are inputs that reflect our assumptions about the presumptions market participants would use in pricing the asset or liability, developed based on the best information available in the circumstances. The hierarchy is broken down into three levels based on the reliability of inputs as follows:

Level 1-Valuations based on quoted prices in active markets for identical assets or liabilities that we have the ability to access.

Level 2-Valuations based on quoted prices in markets that are not active or for which all significant inputs are observable, either directly or indirectly. Assets and liabilities utilizing Level 2 inputs include interest rate swap instruments, exchange-traded debt securities that are not actively traded or do not have a high trading volume, mortgage notes payable, and certain real estate properties on a non-recurring basis.

Level 3-Valuations based on inputs that are unobservable and significant to the overall fair value measurement. Asset and liability measurements utilizing Level 3 inputs include those used in estimating the fair value of certain non-financial assets and non-financial liabilities in purchase acquisitions and those used in the assessment of impairment for goodwill and manufacturer franchise rights.

The availability of observable inputs can vary and is affected by a wide variety of factors. To the extent that valuation is based on models or inputs that are less observable or unobservable in the market, the determination of fair value requires more judgment. Accordingly, the degree of judgment required to determine fair value is greatest for instruments categorized in Level 3. In certain cases, the inputs used to measure fair value may fall into different levels of the fair value hierarchy. In such cases, for disclosure purposes, the level in the fair value hierarchy within which the fair value measurement is disclosed is determined based on the lowest level input that is significant to the fair value measurement.

Fair value is a market-based exit price measure considered from the perspective of a market participant who holds the asset or owes the liability rather than an entity-specific measure. Therefore, even when market assumptions are not readily available, our assumptions are set to reflect those that market participants would use in pricing the asset or liability at the measurement date. We use inputs that are current as of the measurement date, including during periods of significant market fluctuations.

Financial instruments consist primarily of cash and cash equivalents, contracts-in-transit, accounts receivable, cash surrender value of corporate-owned life insurance policies, accounts payable, floor plan notes payable, subordinated long-term debt, mortgage notes payable, and interest rate swap instruments. The carrying values of our financial instruments, with the exception of subordinated long-term debt and mortgage notes payable, approximate fair value due to (i) their short-term nature, (ii) recently completed market transactions, or (iii) existence of variable interest rates, which approximate market rates. The fair value of our subordinated long-term debt is based on reported market prices in an inactive market that reflects Level 2 inputs. We estimate the fair value of our mortgage notes payable using a present value technique based on current market interest rates for similar types of financial instruments that reflect Level 2 inputs.

A summary of the carrying values and fair values of our Notes and our mortgage notes payable is as follows:

|                              | As of         |                   |
|------------------------------|---------------|-------------------|
|                              | June 30, 2022 | December 31, 2021 |
| (In millions)                |               |                   |
| <b>Carrying Value:</b>       |               |                   |
| 4.50% Senior Notes due 2028  | \$ 401.9      | \$ 401.6          |
| 4.625% Senior Notes due 2029 | 788.4         | 787.9             |
| 4.75% Senior Notes due 2030  | 441.5         | 441.2             |
| 5.00% Senior Notes due 2032  | 591.0         | 590.9             |
| Mortgage notes payable (a)   | 1,153.9       | 1,183.6           |
| Total carrying value         | \$ 3,376.7    | \$ 3,405.2        |
| <b>Fair Value:</b>           |               |                   |
| 4.50% Senior Notes due 2028  | \$ 350.3      | \$ 413.6          |
| 4.625% Senior Notes due 2029 | 658.0         | 815.0             |
| 4.75% Senior Notes due 2030  | 366.0         | 455.0             |
| 5.00% Senior Notes due 2032  | 487.5         | 621.8             |
| Mortgage notes payable (a)   | 1,163.7       | 1,196.6           |
| Total fair value             | \$ 3,025.5    | \$ 3,502.0        |

(a) Amounts reflected for the Mortgage notes payable as of June 30, 2022, exclude \$2.8 million classified as Liabilities associated with assets held for sale.

#### Interest Rate Swap Agreements

We currently have seven interest rate swap agreements. In January 2022, we entered into two new interest rate swap agreements with a combined notional principal amount of \$550.0 million. These swaps are designed to provide a hedge against changes in variable rate cash flows regarding fluctuations in the SOFR rate. All interest rate swap agreements with an inception date of 2021 and prior were amended on June 1, 2022 to provide a hedge against changes in variable rate cash flows regarding fluctuations in SOFR as compared to the previous benchmark rate of one-month LIBOR. The revisions to the interest rate swap agreements did not impact our hedge accounting because we applied the accounting expedients outlined in ASU 2020-04 and

ASU 2021-01 of ASC Topic 848, Reference Rate Reform. The following table provides information on the attributes of each swap as of June 30, 2022:

| Inception Date | Notional Principal at Inception | Notional Value as of June 30, 2022 |       | Notional Principal at Maturity | Maturity Date  |
|----------------|---------------------------------|------------------------------------|-------|--------------------------------|----------------|
|                |                                 | (In millions)                      |       |                                |                |
| January 2022   | \$ 300.0                        | \$                                 | 296.3 | \$ 228.8                       | December 2026  |
| January 2022   | \$ 250.0                        | \$                                 | 250.0 | \$ 250.0                       | December 2031  |
| May 2021       | \$ 184.4                        | \$                                 | 177.0 | \$ 110.6                       | May 2031       |
| July 2020      | \$ 93.5                         | \$                                 | 84.0  | \$ 50.6                        | December 2028  |
| July 2020      | \$ 85.5                         | \$                                 | 76.1  | \$ 57.3                        | November 2025  |
| June 2015      | \$ 100.0                        | \$                                 | 66.7  | \$ 53.1                        | February 2025  |
| November 2013  | \$ 75.0                         | \$                                 | 43.3  | \$ 38.7                        | September 2023 |

The fair value of cash flow swaps is calculated as the present value of expected future cash flows, determined on the basis of forward interest rates and present value factors. Fair value estimates reflect a credit adjustment to the discount rate applied to all expected cash flows under the swaps. Other than this input, all other inputs used in the valuation of these swaps are designated to be Level 2 fair values. The fair value of our swaps was a \$70.0 million net asset and a \$0.9 million net liability as of June 30, 2022 and December 31, 2021, respectively.

The following table provides information regarding the fair value of our interest rate swap agreements and the impact on the Condensed Consolidated Balance Sheets:

|                             | As of         |                   |
|-----------------------------|---------------|-------------------|
|                             | June 30, 2022 | December 31, 2021 |
|                             | (In millions) |                   |
| Other current liabilities   | \$ (14.2)     | \$ (3.8)          |
| Other long-term assets      | 84.2          | 5.5               |
| Other long-term liabilities | —             | (2.6)             |
| Total fair value            | \$ 70.0       | \$ (0.9)          |

Our interest rate swaps qualify for cash flow hedge accounting treatment. These interest rate swaps are marked to market at each reporting date and any unrealized gains or losses are included in accumulated other comprehensive income and reclassified to interest expense in the same period or periods during which the hedged transactions affect earnings. Information about the effect of our interest rate swap agreements in the accompanying Condensed Consolidated Statements of Income and Condensed Consolidated Statements of Comprehensive Income, is as follows (in millions):

| For the Three Months Ended June 30, | Results Recognized in Accumulated Other Comprehensive Income/(Loss) | Location of Amount Reclassified from Accumulated Other Comprehensive Income/(Loss) to Earnings | Amount Reclassified from Accumulated Other Comprehensive Income/(Loss) to Earnings |
|-------------------------------------|---|--|--|
| 2022                                | \$ 30.3   | Other interest expense, net  | \$ 1.7   |
| 2021                                | \$ (7.3)  | Other interest expense, net  | \$ 0.9   |

  

| For the Six Months Ended June 30, | Results Recognized in Accumulated Other Comprehensive Income/(Loss) | Location of Amount Reclassified from Accumulated Other Comprehensive Income/(Loss) to Earnings | Amount Reclassified from Accumulated Other Comprehensive Income/(Loss) to Earnings |
|-----------------------------------|---|--|--|
| 2022                              | \$ 75.7   | Other interest expense, net  | \$ 4.8   |
| 2021                              | \$ (1.9)  | Other interest expense, net  | \$ 1.7   |

On the basis of yield curve conditions as of June 30, 2022 and including assumptions about future changes in fair value, we expect the amount to be reclassified out of Accumulated Other Comprehensive Loss into earnings within the next 12 months will be losses of \$14.2 million.

### Investments

The table below presents the Company's investment securities that are measured at fair value on a recurring basis aggregated by the level in the fair value hierarchy within which those measurements fall:

|   | As of June 30, 2022 |         |         |          |
|---|---------------------|---------|---------|----------|
|   | Level 1             | Level 2 | Level 3 | Total    |
|   | (In millions)       |         |         |          |
| Cash equivalents                            | \$ 12.5             | \$ —    | \$ —    | \$ 12.5  |
| Short-term investments                      | 2.7                 | 8.1     | —       | 10.8     |
| U.S Treasury                                | 6.1                 | —       | —       | 6.1      |
| Municipal                                   | —                   | 29.1    | —       | 29.1     |
| Corporate                                   | —                   | 11.1    | —       | 11.1     |
| Mortgage and other asset-backed securities  | —                   | 4.7     | —       | 4.7      |
| Total debt securities                       | 8.8                 | 53.0    | —       | 61.8     |
| Common stock                                | 52.9                | —       | —       | 52.9     |
| Preferred stock                             | —                   | —       | —       | —        |
| Total                                       | \$ 61.7             | \$ 53.0 | \$ —    | \$ 114.7 |
| Investments measured at net asset value (a) |                     |         |         | 1.4      |
| Total investments, at fair value            |                     |         |         | \$ 116.1 |

|   | As of December 31, 2021 |         |         |          |
|---|-------------------------|---------|---------|----------|
|   | Level 1                 | Level 2 | Level 3 | Total    |
|   | (In millions)           |         |         |          |
| Cash equivalents                            | \$ 6.0                  | \$ —    | \$ —    | \$ 6.0   |
| Short-term investments                      | 2.9                     | 8.1     | —       | 11.0     |
| U.S Treasury                                | 7.4                     | —       | —       | 7.4      |
| Municipal                                   | —                       | 28.2    | —       | 28.2     |
| Corporate                                   | —                       | 9.5     | —       | 9.5      |
| Mortgage and other asset-backed securities  | —                       | 8.8     | —       | 8.8      |
| Total debt securities                       | 10.3                    | 54.6    | —       | 64.9     |
| Common stock                                | 65.2                    | —       | —       | 65.2     |
| Preferred stock                             | —                       | —       | —       | —        |
| Total                                       | \$ 75.5                 | \$ 54.6 | \$ —    | \$ 130.1 |
| Investments measured at net asset value (a) |                         |         |         | 4.4      |
| Total investments, at fair value            |                         |         |         | \$ 134.5 |

(a) In accordance with ASC 820-10, certain investments that are measured at fair value using the net asset value (NAV) per share (or its equivalent) as a practical expedient have not been classified in the fair value hierarchy. The NAV is based on the fair value of the underlying assets owned by the fund, minus its liabilities, divided by the number of units outstanding and is determined by the fund investment manager or custodian.

Other investment securities measured at net asset value as a practical expedient in the amount of \$1.4 million are excluded from the fair value leveling disclosure above. We do not have any significant restrictions on our ability to liquidate our positions on these investments, nor do we believe it is probable a price less than NAV would be received in the event of a liquidation.

Available-for-sale debt securities are recorded at fair value and any unrealized gains or losses are included in accumulated other comprehensive income and reclassified to Finance and Insurance, net revenue in the period or periods during which the debt securities are sold and the gains or losses are realized. Information about the effect of our available-for-sale debt securities in the accompanying Condensed Consolidated Statements of Income and Condensed Consolidated Statements of Comprehensive Income, is as follows (in millions):

| For the Three Months Ended June 30, | Results Recognized in Accumulated Other Comprehensive Income/(Loss) | Location of Amount Reclassified from Accumulated Other Comprehensive Income/(Loss) to Earnings | Amount Reclassified from Accumulated Other Comprehensive Income/(Loss) to Earnings |
|-------------------------------------|---|--|--|
| 2022                                | \$ (0.4)  | Revenue-Finance and Insurance, net   | \$ (0.4)   |
| 2021                                | \$ —  | Revenue-Finance and Insurance, net   | \$ —   |

| For the Six Months Ended June 30, | Results Recognized in Accumulated Other Comprehensive Income/(Loss) | Location of Amount Reclassified from Accumulated Other Comprehensive Income/(Loss) to Earnings | Amount Reclassified from Accumulated Other Comprehensive Income/(Loss) to Earnings |
|-----------------------------------|---|--|--|
| 2022                              | \$ (2.8)  | Revenue-Finance and Insurance, net   | \$ (0.7)   |
| 2021                              | \$ —  | Revenue-Finance and Insurance, net   | \$ —   |

## 11. SUPPLEMENTAL CASH FLOW INFORMATION

During the six months ended June 30, 2022 and 2021, we made interest payments, including amounts capitalized, totaling \$74.4 million and \$32.8 million, respectively. Included in these interest payments are \$5.2 million and \$5.8 million, of floor plan interest payments during the six months ended June 30, 2022 and 2021, respectively.

During the six months ended June 30, 2022 and 2021, we made income tax payments, net of refunds received, totaling \$120.9 million and \$74.9 million, respectively.

During the six months ended June 30, 2022 and 2021, we transferred \$128.7 million and \$112.6 million, respectively, of loaner vehicles from Other current assets to Inventories on our Condensed Consolidated Balance Sheets.

## 12. SEGMENT INFORMATION

As of June 30, 2022, the Company had two reportable segments: (1) Dealerships and (2) TCA. Prior to the acquisition of TCA in connection with the LHM Acquisition, we had one reportable segment whereby the geographic dealership groups were aggregated into one reportable segment.

On December 17, 2021, we completed the LHM Acquisition which included 54 new vehicle dealerships, seven used vehicle stores, 11 collision centers, a used vehicle wholesale business, the real property related thereto, and the entities comprising TCA. The dealerships acquired in the LHM Acquisition are located in Utah, Arizona, New Mexico, Colorado, Idaho, California and Washington.

Our dealership operations are organized by management into geographic market-based groups within the Dealership segment. The operations of our F&I product provider is reflected within our TCA segment. Our Chief Operating Decision Maker is our Chief Executive Officer who manages the business, regularly reviews financial information and allocates resources at the geographic market level for our dealerships and at the TCA segment level for our F&I product provider's operations. The geographic dealership group operating segments have been aggregated into one reportable segment as their operations (i) have similar economic characteristics (our markets all have similar long-term average gross margins), (ii) offer similar products and services (all of our markets offer new and used vehicles, parts and service, and finance and insurance products), (iii) have similar customers, (iv) have similar distribution and marketing practices (all of our markets distribute products and services through dealership facilities that market to customers in similar ways), and (v) operate under similar regulatory environments.

Goodwill acquired in the LHM Acquisition of \$929.0 million and \$710.3 million was allocated to the Dealership and TCA segments, respectively, and is consistent with how the Chief Operating Decision Maker reviews financial information and allocates resources. The allocation was based on the net assets acquired in the Dealership and TCA segments. This allocation is preliminary and subject to change once the purchase price allocation is finalized.

The majority of TCA's revenue is generated from sales through our affiliated dealerships. Intercompany profits and losses are eliminated in consolidation.

Reportable segment financial information for the three and six months ended June 30, 2022 and 2021, are as follows:

|              | Three Months Ended June 30, 2022 |         |              |               |
|--------------|----------------------------------|---------|--------------|---------------|
|              | Dealerships                      | TCA     | Eliminations | Total Company |
|              | (In millions)                    |         |              |               |
| Revenue      | \$ 3,930.0                       | \$ 51.9 | \$ (31.7)    | \$ 3,950.2    |
| Gross profit | \$ 793.7                         | \$ 41.8 | \$ (32.8)    | \$ 802.7      |

  

|              | Three Months Ended June 30, 2021 |      |              |               |
|--------------|----------------------------------|------|--------------|---------------|
|              | Dealerships                      | TCA  | Eliminations | Total Company |
|              | (In millions)                    |      |              |               |
| Revenue      | \$ 2,584.0                       | \$ — | \$ —         | \$ 2,584.0    |
| Gross profit | \$ 497.2                         | \$ — | \$ —         | \$ 497.2      |

  

|              | Six Months Ended June 30, 2022 |          |              |               |
|--------------|--------------------------------|----------|--------------|---------------|
|              | Dealerships                    | TCA      | Eliminations | Total Company |
|              | (In millions)                  |          |              |               |
| Revenue      | \$ 7,824.2                     | \$ 109.2 | \$ (71.4)    | \$ 7,862.0    |
| Gross profit | \$ 1,575.1                     | \$ 98.3  | \$ (78.7)    | \$ 1,594.7    |

  

|              | Six Months Ended June 30, 2021 |      |              |               |
|--------------|--------------------------------|------|--------------|---------------|
|              | Dealerships                    | TCA  | Eliminations | Total Company |
|              | (In millions)                  |      |              |               |
| Revenue      | \$ 4,776.9                     | \$ — | \$ —         | \$ 4,776.9    |
| Gross profit | \$ 879.9                       | \$ — | \$ —         | \$ 879.9      |

Total Assets by segment as of June 30, 2022 and as of December 31, 2021 are as follows:

|              | As of June 30, 2022 |          |              |               |
|--------------|---------------------|----------|--------------|---------------|
|              | Dealerships         | TCA      | Eliminations | Total Company |
|              | (In millions)       |          |              |               |
| Total Assets | \$ 6,871.2          | \$ 810.1 | \$ (42.5)    | \$ 7,638.8    |

  

|              | As of December 31, 2021 |          |              |               |
|--------------|-------------------------|----------|--------------|---------------|
|              | Dealerships             | TCA      | Eliminations | Total Company |
|              | (In millions)           |          |              |               |
| Total Assets | \$ 7,289.7              | \$ 762.6 | \$ (49.7)    | \$ 8,002.6    |

### 13. COMMITMENTS AND CONTINGENCIES

Our dealerships are party to dealer and framework agreements with applicable vehicle manufacturers. In accordance with these agreements, each dealership has certain rights and is subject to restrictions typical in the industry. The ability of these manufacturers to influence the operations of the dealerships or the loss of any of these agreements could have a materially negative impact on our operating results.

In some instances, manufacturers may have the right, and may direct us, to implement costly capital improvements to dealerships as a condition to entering into, renewing, or extending franchise agreements with them. Manufacturers also typically require that their franchises meet specific standards of appearance. These factors, either alone or in combination, could cause us to use our financial resources on capital projects that we might not have planned for or otherwise determined to undertake.

From time-to-time, we and our dealerships are or may become involved in various claims relating to, and arising out of, our business and our operations. These claims may involve, but not be limited to, financial and other audits by vehicle manufacturers or lenders and certain federal, state, and local government authorities, which have historically related primarily to (i) incentive and warranty payments received from vehicle manufacturers, or allegations of violations of manufacturer agreements or policies, (ii) compliance with lender rules and covenants, and (iii) payments made to government authorities relating to federal, state, and local taxes, as well as compliance with other government regulations. Claims may also arise through litigation, government proceedings, and other dispute resolution processes. Such claims, including class actions, could relate to, but may not be limited to, the practice of charging administrative fees and other fees and commissions, employment-related matters, truth-in-lending and other dealer assisted financing obligations, contractual disputes, actions brought by governmental authorities, and other matters.

We evaluate pending and threatened claims and establish loss contingency reserves based upon outcomes we currently believe to be probable and reasonably estimable. Based on our review of the various types of claims currently known to us, there is no indication of material reasonably possible losses in excess of amounts accrued in the aggregate. We currently do not anticipate that any known claim will materially adversely affect our financial condition, liquidity, or results of operations. However, the outcome of any matter cannot be predicted with certainty, and an unfavorable resolution of one or more matters presently known or arising in the future could have a material adverse effect on our financial condition, liquidity, or results of operations.

A significant portion of our business involves the sale of vehicles, parts, or vehicles composed of parts that are manufactured outside the United States. As a result, our operations are subject to customary risks of importing merchandise, including fluctuations in the relative values of currencies, import duties, exchange controls, trade restrictions, work stoppages, and general political and socio-economic conditions in foreign countries. The United States or the countries from which our products are imported may, from time-to-time, impose new quotas, duties, tariffs, or other restrictions, or adjust presently prevailing quotas, duties, or tariffs, which may affect our operations, and our ability to purchase imported vehicles and/or parts at reasonable prices.

Substantially all of our facilities are subject to federal, state and local provisions regarding the discharge of materials into the environment. Compliance with these provisions has not had, nor do we expect such compliance to have, any material effect upon our capital expenditures, net earnings, financial condition, liquidity or competitive position. We believe that our current practices and procedures for the control and disposition of such materials comply with applicable federal, state, and local requirements. No assurances can be provided, however, that future laws or regulations, or changes in existing laws or regulations, would not require us to expend significant resources in order to comply therewith.

We had \$12.7 million of letters of credit outstanding as of June 30, 2022, which are required by certain of our insurance providers. In addition, as of June 30, 2022, we maintained a \$16.0 million surety bond line in the ordinary course of our business. Our letters of credit and surety bond line are considered to be off balance sheet arrangements.

Our other material commitments include (i) floor plan notes payable, (ii) operating leases, (iii) long-term debt and (iv) interest on long-term debt, as described elsewhere herein.

## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

### Forward-Looking Information

Certain of the discussions and information included or incorporated by reference in this report may constitute "forward-looking statements" within the meaning of the federal securities laws. Forward-looking statements are statements that are not historical in nature and may include statements relating to our goals, plans and projections regarding industry and general economic trends, our expected financial position, results of operations or market position and our business strategy. Such statements can generally be identified by words such as "may," "target," "could," "would," "will," "should," "believe," "expect," "anticipate," "plan," "intend," "foresee," and other similar words or phrases. Forward-looking statements may also relate to our expectations and assumptions with respect to, among other things:

- the seasonally adjusted annual rate of new vehicle sales in the United States;
- general economic conditions and its expected impact on our revenue and expenses;
- our expected parts and service revenue due to, among other things, improvements in vehicle technology;
- our ability to limit our exposure to regional economic downturns due to our geographic diversity and brand mix;
- manufacturers' continued use of incentive programs to drive demand for their product offerings;
- our capital allocation strategy, including as it relates to acquisitions and divestitures, stock repurchases, dividends and capital expenditures;
- our revenue growth strategy;
- the growth of the brands that comprise our portfolio over the long-term;
- disruptions in the production and supply of vehicles and parts from our vehicle and parts manufacturers and other suppliers due to any ongoing impact of supply issues, including the global semiconductor shortage, which can disrupt our operations;
- disruptions in our operations, the operations of our vehicle and parts manufacturers and other suppliers, vendors and business partners, and the global economy in general due to the global COVID-19 pandemic, including due to any new strains of the virus and the efficacy and rate of vaccinations; and
- our estimated future capital expenditures, which can be impacted by increasing prices and labor shortages and acquisitions and divestitures.

Forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause our actual future results, performance or achievements to be materially different from any future results, performance, or achievements expressed or implied by the forward-looking statements. Such factors include, but are not limited to:

- the ability to successfully integrate the operations of the LHM Acquisition into our existing operations and the diversion of management's attention from ongoing business and regular business responsibilities to effect such integration;
- the effects of increased expenses or unanticipated liabilities incurred as a result of, or due to activities related to our acquisitions or divestitures;
- changes in general economic and business conditions, including the current inflationary environment, the current rising interest rate environment, changes in employment levels, consumer confidence levels, consumer demand and preferences, the availability and cost of credit, fuel prices and levels of discretionary personal income;
- our ability to generate sufficient cash flows, maintain our liquidity and obtain any necessary additional funds for working capital, capital expenditures, acquisitions, stock repurchases, debt maturity payments and other corporate purposes, if necessary or desirable;
- significant disruptions in the production and delivery of vehicles and parts for any reason, including the COVID-19 pandemic, supply shortages (including semiconductor chips), the ongoing conflict in Russia and Ukraine, including any government sanctions imposed in connection therewith, natural disasters, severe weather, civil unrest, product recalls, work stoppages or other occurrences that are outside of our control;



- our ability to execute our automotive retailing and service business strategy while operating under restrictions and best practices imposed or encouraged by governmental and other regulatory authorities;
- our ability successfully to attract and retain skilled employees;
- our ability to successfully operate, including our ability to maintain, and obtain future, necessary regulatory approvals, for Total Care Auto, Powered by Landcar ("TCA"), our recently acquired F&I products provider;
- adverse conditions affecting the vehicle manufacturers whose brands we sell, and their ability to design, manufacture, deliver and market their vehicles successfully;
- the degree to which disruptions in our operations, the operations of our vehicle and parts manufacturers and other suppliers, vendors and business partners, and the global economy in general due to any ongoing effects of the COVID-19 pandemic may adversely impact our business, results of operations, financial condition and cash flows;
- changes in the mix, and total number, of vehicles we are able to sell;
- our outstanding indebtedness and our continued ability to comply with applicable covenants in our various financing and lease agreements, or to obtain waivers of these covenants as necessary;
- high levels of competition in our industry, which may create pricing and margin pressures on our products and services;
- our relationships with manufacturers of the vehicles we sell and our ability to renew, and enter into new framework and dealer agreements with vehicle manufacturers whose brands we sell, on terms acceptable to us;
- the availability of manufacturer incentive programs and our ability to earn these incentives;
- failure of our, or those of our third-party service providers, management information systems;
- any data security breaches occurring, including with regard to personally identifiable information ("PII");
- changes in laws and regulations governing the operation of automobile franchises, including trade restrictions, consumer protections, accounting standards, taxation requirements and environmental laws;
- changes in, or the imposition of, new tariffs or trade restrictions on imported vehicles or parts;
- adverse results from litigation or other similar proceedings involving us;
- our ability to consummate planned mergers, acquisitions and dispositions;
- any disruptions in the financial markets, which may impact our ability to access capital;
- our relationships with, and the financial stability of, our lenders and lessors;
- our ability to execute our initiatives and other strategies;
- our ability to leverage gains from our dealership portfolio; and
- our ability to successfully integrate businesses we may acquire, or that any business we acquire may not perform as we expected at the time we acquired it.

Many of these factors are beyond our ability to control or predict, and their ultimate impact could be material. Moreover, the factors set forth under "Item 1A. Risk Factors" and other cautionary statements made in this report should be read and considered as forward-looking statements subject to such uncertainties. Forward-looking statements speak only as of the date of this report. We expressly disclaim any obligation to update any forward-looking statement contained herein.

## OVERVIEW

We are one of the largest automotive retailers in the United States. As of June 30, 2022, through our Dealerships segment, we owned and operated 198 new vehicle franchises (148 new vehicle dealership locations), representing 31 brands of automobiles, within 15 states. We also operated 34 collision centers, seven stand-alone used vehicle stores, one used vehicle wholesale business, one auto auction, and TCA, our leading F&I product provider. Our stores offer an extensive range of automotive products and services, including new and used vehicles; parts and service, which includes repair and maintenance services, replacement parts and collision repair services; and finance and insurance products. The finance and insurance

products are provided by independent third parties and TCA. The F&I products offered by TCA are primarily sold through Larry H. Miller Dealerships. As of June 30, 2022, our new vehicle revenue brand mix consisted of 30% luxury, 40% imports and 30% domestic brands. As a result of the LHM Acquisition on December 17, 2021, as outlined below, the Company now reflects its operations in two reportable segments: Dealerships and TCA.

Our Dealership segment revenues are derived primarily from: (i) the sale of new vehicles; (ii) the sale of used vehicles to individual retail customers ("used retail") and to other dealers at auction ("wholesale") (the terms "used retail" and "wholesale" collectively referred to as "used"); (iii) repair and maintenance services, including collision repair, the sale of automotive replacement parts, and the reconditioning of used vehicles (collectively referred to as "parts and service"); and (iv) the arrangement of third-party vehicle financing and the sale of a number of vehicle protection products. F&I products are offered by dealerships to customers in connection with the purchase of vehicles through either TCA or independent third parties. F&I revenue recorded by the Dealership segment related to TCA products is eliminated upon consolidation. We evaluate the results of our new and used vehicle sales based on unit volumes and gross profit per vehicle sold, our parts and service operations based on aggregate gross profit, and our F&I business based on F&I gross profit per vehicle sold.

Our dealerships' gross profit margin varies with our revenue mix. Historically, the sales of new vehicles generally results in a lower gross profit margin than used vehicle sales, sales of parts and service, and sales of F&I products. As a result, when used vehicle, parts and service, and F&I revenue increase as a percentage of total revenue, we expect our overall gross profit margin to increase.

Our TCA segment revenues, reflected in F&I Revenues, are derived from the sale of various vehicle protection products including vehicle service contracts, guaranteed asset protection insurance, prepaid maintenance contracts, vehicle theft assistance contracts and appearance protection contracts. These products are sold primarily through LHM Dealerships. TCA's F&I Revenues are supplemented with investment gains or losses and income earned associated with the performance of TCA's investment portfolio.

Our TCA segment gross profit margin can vary due to incurred claims expense and the performance of our investment portfolio. Certain F&I products may result in higher gross profit margins to TCA. Therefore, the product mix of F&I products sold by TCA can affect the gross profits earned. In addition, interest rate volatility based on economic and market conditions outside the control of the Company, may increase or reduce TCA segment gross profit margins as well as the fair market values of certain securities within our investment portfolio. Fair market values typically fluctuate inversely to the fluctuations in interest rates.

Selling, general, and administrative ("SG&A") expenses consist primarily of fixed and incentive-based compensation, advertising, rent, insurance, utilities, and other customary operating expenses. A significant portion of our cost structure is variable (such as sales commissions) or controllable (such as advertising), which we believe allows us to adapt to changes in the retail environment over the long-term. We evaluate commissions paid to salespeople as a percentage of retail vehicle gross profit, advertising expense on a per vehicle retailed ("PVR") basis, and all other SG&A expenses in the aggregate as a percentage of total gross profit. Commissions expense paid by TCA to our affiliated dealerships and reflected as F&I Revenue in our Dealerships segment is eliminated upon consolidation.

Our continued organic growth is dependent upon the execution of our balanced automotive retailing and service business strategy, the continued strength of our brand mix, and the production and allocation of desirable vehicles from the automobile manufacturers whose brands we sell. Our vehicle sales have historically fluctuated with product availability as well as local and national economic conditions, including consumer confidence, availability of consumer credit, fuel prices, and employment levels.

In addition, our ability to sell certain new and used vehicles can be negatively impacted by a number of factors, some of which are outside of our control. Manufacturers continue to be hampered by the lack of availability of parts and key components from suppliers, such as semiconductor chips, which has impacted new vehicle inventory levels and availability of certain parts. We cannot predict with any certainty how long the automotive retail industry will continue to be subject to these production slowdowns or when normalized production will resume at these manufacturers.

The seasonally adjusted annual rate ("SAAR") of new vehicle sales in the U.S. during the three months ended June 30, 2022 was 13.5 million compared to 17.1 million during the three months ended June 30, 2021. On a same-store basis, each of our revenue streams, with the exception of new vehicles, increased from the prior year quarter. The lack of availability of new vehicle inventory has driven up demand for used vehicles.

We had total available liquidity of \$1.01 billion as of June 30, 2022, which consisted of cash and cash equivalents of \$14.8 million (excluding \$85.3 million held by TCA), \$229.3 million (excluding \$75.0 million held by TCA) of available funds in our floor plan offset accounts, \$389.0 million of availability under our new vehicle floorplan facility that is able to be converted to revolving credit facility, \$48.3 million of availability under our revolving credit facility, and \$327.8 million of availability

under our used vehicle revolving floor plan facility. For further discussion of our liquidity, please refer to "Liquidity and Capital Resources" below. We believe we will have sufficient liquidity to meet our debt service and working capital requirements; commitments and contingencies; debt repayment, maturity and repurchase obligations; acquisitions; capital expenditures; and any operating requirements for at least the next twelve months.

**CONSOLIDATED RESULTS OF OPERATIONS**
**Three Months Ended June 30, 2022 Compared to the Three Months Ended June 30, 2021**

|  | For the Three Months Ended June<br>30, |                 | Increase<br>(Decrease) | %<br>Change |
|--|--|-----------------|------------------------|-------------|
|  | 2022                                   | 2021            |                        |             |
| (Dollars in millions, except per share data) |  |                 |                        |             |
| <b>REVENUE:</b>                              |  |                 |                        |             |
| New vehicle                                  | \$ 1,864.5                             | \$ 1,368.4      | \$ 496.1               | 36 %        |
| Used vehicle                                 | 1,362.5                                | 816.2           | 546.3                  | 67 %        |
| Parts and service                            | 520.2                                  | 292.4           | 227.8                  | 78 %        |
| Finance and insurance, net                   | 203.0                                  | 107.0           | 96.0                   | 90 %        |
| <b>TOTAL REVENUE</b>                         | <b>3,950.2</b>                         | <b>2,584.0</b>  | <b>1,366.2</b>         | <b>53 %</b> |
| <b>GROSS PROFIT:</b>                         |  |                 |                        |             |
| New vehicle                                  | 220.4                                  | 124.1           | 96.3                   | 78 %        |
| Used vehicle                                 | 104.2                                  | 83.5            | 20.7                   | 25 %        |
| Parts and service                            | 290.4                                  | 182.6           | 107.8                  | 59 %        |
| Finance and insurance, net                   | 187.7                                  | 107.0           | 80.7                   | 75 %        |
| <b>TOTAL GROSS PROFIT</b>                    | <b>802.7</b>                           | <b>497.2</b>    | <b>305.5</b>           | <b>61 %</b> |
| <b>OPERATING EXPENSES:</b>                   |  |                 |                        |             |
| Selling, general, and administrative         | 448.3                                  | 269.7           | 178.6                  | 66 %        |
| Depreciation and amortization                | 18.1                                   | 10.1            | 8.0                    | 79 %        |
| Other operating expense (income), net        | 0.8                                    | (1.0)           | 1.8                    | 180 %       |
| <b>INCOME FROM OPERATIONS</b>                | <b>335.5</b>                           | <b>218.4</b>    | <b>117.1</b>           | <b>54 %</b> |
| <b>OTHER EXPENSES:</b>                       |  |                 |                        |             |
| Floor plan interest expense                  | 1.5                                    | 2.1             | (0.6)                  | (29) %      |
| Other interest expense, net                  | 37.6                                   | 14.4            | 23.2                   | 161 %       |
| Loss on dealership divestitures, net         | 28.7                                   | —               | 28.7                   | — %         |
| Total other expenses, net                    | 67.8                                   | 16.5            | 51.3                   | 311 %       |
| <b>INCOME BEFORE INCOME TAXES</b>            | <b>267.7</b>                           | <b>201.9</b>    | <b>65.8</b>            | <b>33 %</b> |
| Income tax expense                           | 66.3                                   | 49.8            | 16.5                   | 33 %        |
| <b>NET INCOME</b>                            | <b>\$ 201.4</b>                        | <b>\$ 152.1</b> | <b>\$ 49.3</b>         | <b>32 %</b> |
| Net income per common share—Diluted          | <u>\$ 9.07</u>                         | <u>\$ 7.80</u>  | <u>\$ 1.27</u>         | <u>16 %</u> |

|   | <b>For the Three Months Ended June 30,</b> |             |
|---|--|-------------|
|   | <b>2022</b>                                | <b>2021</b> |
| <b>REVENUE MIX PERCENTAGES:</b>                         |  |             |
| New vehicle   | 47.2 %                                     | 53.0 %      |
| Used vehicle retail                                     | 32.2 %                                     | 29.4 %      |
| Used vehicle wholesale                                  | 2.3 %                                      | 2.2 %       |
| Parts and service                                       | 13.2 %                                     | 11.3 %      |
| Finance and insurance, net                              | 5.1 %                                      | 4.1 %       |
| Total revenue   | 100.0 %                                    | 100.0 %     |
| <b>GROSS PROFIT MIX PERCENTAGES:</b>                    |  |             |
| New vehicle   | 27.5 %                                     | 25.0 %      |
| Used vehicle retail                                     | 12.5 %                                     | 14.8 %      |
| Used vehicle wholesale                                  | 0.4 %                                      | 2.0 %       |
| Parts and service                                       | 36.2 %                                     | 36.7 %      |
| Finance and insurance, net                              | 23.4 %                                     | 21.5 %      |
| Total gross profit                                      | 100.0 %                                    | 100.0 %     |
| <b>GROSS PROFIT MARGIN</b>                              | 20.3                                       | 19.2        |
| <b>SG&amp;A EXPENSE AS A PERCENTAGE OF GROSS PROFIT</b> | 55.8 %                                     | 54.2 %      |

Total revenue during the second quarter of 2022 increased by \$1.37 billion (53%) compared to the second quarter of 2021, due to a \$496.1 million (36%) increase in new vehicle revenue, a \$546.3 million (67%) increase in used vehicle revenue, a \$227.8 million (78%) increase in parts and service revenue and a \$96.0 million (90%) increase in F&I, net revenue. During the three months ended June 30, 2022, gross profit increased by \$305.5 million (61%) driven by an \$96.3 million (78%) increase in new vehicle gross profit, a \$20.7 million (25%) increase in used vehicle gross profit, an \$107.8 million (59%) increase in parts and service gross profit and a \$80.7 million (75%) increase in F&I gross profit.

Income from operations during the second quarter of 2022 increased by \$117.1 million (54%) compared to the second quarter of 2021, primarily due to the \$305.5 million (61%) increase in gross profit, partially offset by a \$178.6 million (66%) increase in SG&A expense, a \$8.0 million (79%) increase in depreciation and amortization expense and a \$1.8 million (180%) increase in other operating (income) expense, net. Total other expenses, net increased by \$51.3 million (311%), primarily due to a loss on dealership divestitures, a \$23.2 million (161%) increase in other interest expense, net partially offset by a \$0.6 million (29%) decrease in floor plan interest expense during the second quarter of 2022. As a result, income before income taxes increased \$65.8 million (33%). Overall, net income increased by \$49.3 million (32%) during the second quarter of 2022 as compared to the second quarter of 2021.

The Company's results for the second quarter of 2022 include the full quarter results of our dealerships acquired in the fourth quarter of 2021. Same store amounts consist of information from dealerships for identical months in each comparative period, commencing with the first month we owned the dealership. Additionally, amounts related to divested dealerships are excluded from each comparative period.

**DEALERSHIP SEGMENT**
*New Vehicle—*

|   | <b>For the Three Months Ended June</b> |                   | <b>Increase<br/>(Decrease)</b> | <b>%<br/>Change</b> |
|---|--|-------------------|--------------------------------|---------------------|
|   | <b>2022</b>                            | <b>2021</b>       |                                |                     |
| <b>(Dollars in millions, except for per vehicle data)</b> |  |                   |                                |                     |
| <b>As Reported:</b>                                       |  |                   |                                |                     |
| <b>Revenue:</b>   |  |                   |                                |                     |
| Luxury  | \$ 592.3                               | \$ 608.2          | \$ (15.9)                      | (3)%                |
| Import  | 719.4                                  | 556.1             | 163.3                          | 29 %                |
| Domestic  | 552.8                                  | 204.1             | 348.7                          | 171 %               |
| Total new vehicle revenue                                 | <u>\$ 1,864.5</u>                      | <u>\$ 1,368.4</u> | \$ 496.1                       | 36 %                |
| <b>Gross profit:</b>                                      |  |                   |                                |                     |
| Luxury  | \$ 76.5                                | \$ 61.9           | \$ 14.6                        | 24 %                |
| Import  | 87.7                                   | 44.0              | 43.7                           | 99 %                |
| Domestic  | 56.2                                   | 18.2              | 38.0                           | 209 %               |
| Total new vehicle gross profit                            | <u>\$ 220.4</u>                        | <u>\$ 124.1</u>   | \$ 96.3                        | 78 %                |
| <b>New vehicle units:</b>                                 |  |                   |                                |                     |
| Luxury  | 8,899                                  | 10,085            | (1,186)                        | (12)%               |
| Import  | 19,564                                 | 17,257            | 2,307                          | 13 %                |
| Domestic  | 10,234                                 | 4,383             | 5,851                          | 133 %               |
| Total new vehicle units                                   | <u>38,697</u>                          | <u>31,725</u>     | 6,972                          | 22 %                |
| <b>Same Store:</b>  |  |                   |                                |                     |
| <b>Revenue:</b>   |  |                   |                                |                     |
| Luxury  | \$ 511.2                               | \$ 590.9          | \$ (79.7)                      | (13)%               |
| Import  | 386.2                                  | 556.0             | (169.8)                        | (31)%               |
| Domestic  | 160.7                                  | 204.1             | (43.4)                         | (21)%               |
| Total new vehicle revenue                                 | <u>\$ 1,058.1</u>                      | <u>\$ 1,351.0</u> | \$ (292.9)                     | (22)%               |
| <b>Gross profit:</b>                                      |  |                   |                                |                     |
| Luxury  | \$ 63.4                                | \$ 59.7           | \$ 3.7                         | 6 %                 |
| Import  | 47.2                                   | 44.0              | 3.2                            | 7 %                 |
| Domestic  | 14.5                                   | 18.2              | (3.7)                          | (20)%               |
| Total new vehicle gross profit                            | <u>\$ 125.1</u>                        | <u>\$ 121.9</u>   | \$ 3.2                         | 3 %                 |
| <b>New vehicle units</b>                                  |  |                   |                                |                     |
| Luxury  | 7,703                                  | 9,780             | (2,077)                        | (21)%               |
| Import  | 10,741                                 | 17,257            | (6,516)                        | (38)%               |
| Domestic  | 3,150                                  | 4,383             | (1,233)                        | (28)%               |
| Total new vehicle units                                   | <u>21,594</u>                          | <u>31,420</u>     | (9,826)                        | (31)%               |

*New Vehicle Metrics—*

|                                   | <b>For the Three Months Ended June 30,</b> |             | <b>Increase<br/>(Decrease)</b> | <b>%<br/>Change</b> |
|-----------------------------------|--|-------------|--------------------------------|---------------------|
|                                   | <b>2022</b>                                | <b>2021</b> |                                |                     |
| <b>As Reported:</b>               |  |             |                                |                     |
| Revenue per new vehicle sold      | \$ 48,182                                  | \$ 43,133   | \$ 5,049                       | 12 %                |
| Gross profit per new vehicle sold | \$ 5,696                                   | \$ 3,912    | \$ 1,784                       | 46 %                |
| New vehicle gross margin          | 11.8 %                                     | 9.1 %       | 2.7 %                          |                     |
| <b>Luxury:</b>                    |  |             |                                |                     |
| Gross profit per new vehicle sold | \$ 8,596                                   | \$ 6,138    | \$ 2,458                       | 40 %                |
| New vehicle gross margin          | 12.9 %                                     | 10.2 %      | 2.7 %                          |                     |
| <b>Import:</b>                    |  |             |                                |                     |
| Gross profit per new vehicle sold | \$ 4,483                                   | \$ 2,550    | \$ 1,933                       | 76 %                |
| New vehicle gross margin          | 12.2 %                                     | 7.9 %       | 4.3 %                          |                     |
| <b>Domestic:</b>                  |  |             |                                |                     |
| Gross profit per new vehicle sold | \$ 5,491                                   | \$ 4,152    | \$ 1,339                       | 32 %                |
| New vehicle gross margin          | 10.2 %                                     | 8.9 %       | 1.3 %                          |                     |
| <b>Same Store:</b>                |  |             |                                |                     |
| Revenue per new vehicle sold      | \$ 49,000                                  | \$ 42,998   | \$ 6,002                       | 14 %                |
| Gross profit per new vehicle sold | \$ 5,793                                   | \$ 3,880    | \$ 1,913                       | 49 %                |
| New vehicle gross margin          | 11.8 %                                     | 9.0 %       | 2.8 %                          |                     |
| <b>Luxury:</b>                    |  |             |                                |                     |
| Gross profit per new vehicle sold | \$ 8,231                                   | \$ 6,104    | \$ 2,127                       | 35 %                |
| New vehicle gross margin          | 12.4 %                                     | 10.1 %      | 2.3 %                          |                     |
| <b>Import:</b>                    |  |             |                                |                     |
| Gross profit per new vehicle sold | \$ 4,394                                   | \$ 2,550    | \$ 1,844                       | 72 %                |
| New vehicle gross margin          | 12.2 %                                     | 7.9 %       | 4.3 %                          |                     |
| <b>Domestic:</b>                  |  |             |                                |                     |
| Gross profit per new vehicle sold | \$ 4,603                                   | \$ 4,152    | \$ 451                         | 11 %                |
| New vehicle gross margin          | 9.0 %                                      | 8.9 %       | 0.1 %                          |                     |

New vehicle revenue increased by \$496.1 million (36%) due to a \$348.7 million (171%) increase in domestic brands revenue, a \$163.3 million (29%) increase in import brands revenue, partially offset by a \$15.9 million (3%) decrease in luxury brands revenue. The 36% increase in new vehicle revenue is the result of a 22% increase in new vehicle units sold and a 12% increase in revenue per new vehicle sold. Same store new vehicle revenue decreased by \$292.9 million (22%) due to a \$79.7 million (13%) decrease in luxury brands revenue, a \$169.8 million (31%) decrease in import brands revenue and \$43.4 million (21%) decrease in domestic brands revenue.

New vehicle gross profit increased by \$96.3 million (78%) for the three months ended June 30, 2022 and same store new vehicle gross profit increased \$3.2 million (3%) over the same period. Same store new vehicle gross profit margin for the three months ended June 30, 2022 increased 280 basis points to 11.8%. The increase in our same store gross profit margin was primarily attributable to our efforts to focus on optimizing margin as new inventory levels declined as a result of manufacturer production disruptions.

We ended the quarter with approximately 13 days of supply of new vehicle inventory, well below historical levels. Our new vehicle inventory levels have been negatively impacted by production disruptions at the manufacturers caused primarily by the significant shortage of semiconductor chips, parts and other key components.

*Used Vehicle—*

|  | For the Three Months Ended June 30, |                 | Increase (Decrease) | % Change |
|--|-------------------------------------|-----------------|---------------------|----------|
|  | 2022                                | 2021            |                     |          |
| (Dollars in millions, except for per vehicle data) |                                     |                 |                     |          |
| <b>As Reported:</b>                                |                                     |                 |                     |          |
| Revenue:   |                                     |                 |                     |          |
| Used vehicle retail revenue                        | \$ 1,272.8                          | \$ 759.4        | \$ 513.4            | 68 %     |
| Used vehicle wholesale revenue                     | 89.7                                | 56.8            | 32.9                | 58 %     |
| Used vehicle revenue                               | <u>\$ 1,362.5</u>                   | <u>\$ 816.2</u> | \$ 546.3            | 67 %     |
| Gross profit:                                      |                                     |                 |                     |          |
| Used vehicle retail gross profit                   | \$ 100.8                            | \$ 73.5         | \$ 27.3             | 37 %     |
| Used vehicle wholesale gross profit                | 3.4                                 | 10.0            | (6.6)               | (66)%    |
| Used vehicle gross profit                          | <u>\$ 104.2</u>                     | <u>\$ 83.5</u>  | \$ 20.7             | 25 %     |
| Used vehicle retail units:                         |                                     |                 |                     |          |
| Used vehicle retail units                          | <u>39,848</u>                       | <u>26,856</u>   | 12,992              | 48 %     |
| <b>Same Store:</b>                                 |                                     |                 |                     |          |
| Revenue:   |                                     |                 |                     |          |
| Used vehicle retail revenue                        | \$ 837.2                            | \$ 748.6        | \$ 88.6             | 12 %     |
| Used vehicle wholesale revenue                     | 38.6                                | 56.5            | (17.9)              | (32)%    |
| Used vehicle revenue                               | <u>\$ 875.8</u>                     | <u>\$ 805.1</u> | \$ 70.7             | 9 %      |
| Gross profit:                                      |                                     |                 |                     |          |
| Used vehicle retail gross profit                   | \$ 57.3                             | \$ 72.7         | \$ (15.4)           | (21)%    |
| Used vehicle wholesale gross profit                | 1.3                                 | 9.9             | (8.6)               | (87)%    |
| Used vehicle gross profit                          | <u>\$ 58.6</u>                      | <u>\$ 82.6</u>  | \$ (24.0)           | (29)%    |
| Used vehicle retail units:                         |                                     |                 |                     |          |
| Used vehicle retail units                          | <u>25,891</u>                       | <u>26,505</u>   | (614)               | (2)%     |

*Used Vehicle Metrics—*

|  | For the Three Months Ended June 30, |                 | Increase (Decrease) | % Change |
|--|-------------------------------------|-----------------|---------------------|----------|
|  | 2022                                | 2021            |                     |          |
| <b>As Reported:</b>                    |                                     |                 |                     |          |
| Revenue per used vehicle retailed      | \$ 31,941                           | \$ 28,277       | \$ 3,664            | 13 %     |
| Gross profit per used vehicle retailed | <u>\$ 2,530</u>                     | <u>\$ 2,737</u> | \$ (207)            | (8)%     |
| Used vehicle retail gross margin       | <u>7.9 %</u>                        | <u>9.7 %</u>    | (1.8)%              |          |
| <b>Same Store:</b>                     |                                     |                 |                     |          |
| Revenue per used vehicle retailed      | \$ 32,336                           | \$ 28,244       | \$ 4,092            | 14 %     |
| Gross profit per used vehicle retailed | <u>\$ 2,213</u>                     | <u>\$ 2,743</u> | \$ (530)            | (19)%    |
| Used vehicle retail gross margin       | <u>6.8 %</u>                        | <u>9.7 %</u>    | (2.9)%              |          |

Used vehicle revenue increased by \$546.3 million (67%) due to a \$513.4 million (68%) increase in used vehicle retail revenue and a \$32.9 million (58%) increase in used vehicle wholesale revenue. Same store used vehicle revenue increased by \$70.7 million (9%) due to a \$88.6 million (12%) increase in used vehicle retail revenue, partially offset a \$17.9 million (32%) decrease in used vehicle wholesale revenue. Total used vehicle retail unit sales increased by 48% while same store retail used vehicle unit sales decreased by (2)% during the three months ended June 30, 2022 as compared to the three months ended June 30, 2021. Used vehicle revenues and unit volume continued to benefited from the decline in new vehicle inventory availability during the second quarter of 2022 although margins have begun to compress from the prior year period on both an all stores and



same-store basis. For the three months ended June 30, 2022, total Company and same store used vehicle retail gross profit margins decreased by 180 basis points and 290 basis points, respectively, as compared to the prior year quarter.

Our 34 days of supply of used vehicle inventory as of June 30, 2022, is in line with our historic targeted range of 30 to 35 days.

*Parts and Service—*

|  | <b>For the Three Months Ended<br/>June 30,</b> |                 | <b>Increase<br/>(Decrease)</b> | <b>%<br/>Change</b> |
|--|--|-----------------|--------------------------------|---------------------|
|  | <b>2022</b>                                    | <b>2021</b>     |                                |                     |
| <b>(Dollars in millions)</b>   |  |                 |                                |                     |
| <b>As Reported:</b>  |  |                 |                                |                     |
| Parts and service revenue  | \$ 528.3                                       | \$ 292.4        | \$ 235.9                       | 81 %                |
| <b>Parts and service gross profit:</b>                                   |  |                 |                                |                     |
| Customer pay   | \$ 184.5                                       | \$ 106.8        | \$ 77.7                        | 73 %                |
| Warranty   | 33.5   | 27.0            | 6.5                            | 24 %                |
| Wholesale parts  | 19.6   | 8.0             | 11.6                           | 145 %               |
| Parts and service gross profit, excluding reconditioning and preparation | <u>\$ 237.6</u>                                | <u>\$ 141.8</u> | \$ 95.8                        | 68 %                |
| Parts and service gross margin, excluding reconditioning and preparation | 45.0 %   | 48.5 %          | (3.5)%                         |                     |
| Reconditioning and preparation *   | <u>\$ 56.8</u>                                 | <u>\$ 40.8</u>  | \$ 16.0                        | 39 %                |
| Total parts and service gross profit                                     | <u>\$ 294.4</u>                                | <u>\$ 182.6</u> | \$ 111.8                       | 61 %                |
| <b>Same Store:</b>   |  |                 |                                |                     |
| Parts and service revenue  | \$ 317.8                                       | \$ 288.7        | \$ 29.1                        | 10 %                |
| <b>Parts and service gross profit:</b>                                   |  |                 |                                |                     |
| Customer pay   | \$ 122.0                                       | \$ 105.5        | \$ 16.5                        | 16 %                |
| Warranty   | 20.6   | 26.7            | (6.1)                          | (23)%               |
| Wholesale parts  | 8.8  | 7.8             | 1.0                            | 13 %                |
| Parts and service gross profit, excluding reconditioning and preparation | <u>\$ 151.4</u>                                | <u>\$ 140.0</u> | \$ 11.4                        | 8 %                 |
| Parts and service gross margin, excluding reconditioning and preparation | 47.6 %   | 48.5 %          | (0.9)%                         |                     |
| Reconditioning and preparation *   | <u>\$ 38.8</u>                                 | <u>\$ 40.2</u>  | \$ (1.4)                       | (3)%                |
| Total parts and service gross profit                                     | <u>\$ 190.2</u>                                | <u>\$ 180.2</u> | \$ 10.0                        | 6 %                 |

\* Reconditioning and preparation represents the gross profit earned by our parts and service departments for internal work performed and is included as a reduction of Parts and Service Cost of Sales in the accompanying Condensed Consolidated Statements of Income upon the sale of the vehicle.

The \$235.9 million (81%) increase in parts and service revenue was due to an \$152.4 million (76%) increase in customer pay revenue, a \$69.0 million (159%) increase in wholesale parts revenue and a \$14.5 million (30%) increase in warranty revenue. Same store parts and service revenue increased by \$29.1 million (10%) to \$317.8 million during the three months ended June 30, 2022 from \$288.7 million during the three months ended June 30, 2021. The increase in same store parts and service revenue was due to a \$30.2 million (15%) increase in customer pay revenue, a \$7.8 million (18%) increase in wholesale parts revenue partially offset by a \$8.9 million (19%) decrease in warranty revenue.

During the three months ended June 30, 2022, parts and service gross profit, excluding reconditioning and preparation, increased by \$95.8 million (68%) to \$237.6 million and same store parts and service gross profit, excluding reconditioning and preparation, increased by \$11.4 million (8%) to \$151.4 million. We attribute much of this increase to consumer driving habits returning to pre-pandemic levels. We continue to focus on increasing our customer pay parts and service revenue over the long-term by improving the customer experience, providing competitive benefits to our technicians, capitalizing on our dealership training programs, and upgrading equipment.

*Finance and Insurance, net—*

|  | For the Three Months Ended June<br>30, |          | Increase<br>(Decrease) | %<br>Change |
|--|--|----------|------------------------|-------------|
|  | 2022                                   | 2021     |                        |             |
| (Dollars in millions, except for per vehicle data) |  |          |                        |             |
| <b>As Reported:</b>                                |  |          |                        |             |
| Finance and insurance, net                         | \$ 174.7                               | \$ 107.0 | \$ 67.7                | 63 %        |
| Finance and insurance, net per vehicle sold        | \$ 2,224                               | \$ 1,827 | \$ 397                 | 22 %        |
| <b>Same Store:</b>                                 |  |          |                        |             |
| Finance and insurance, net                         | \$ 114.4                               | \$ 106.0 | \$ 8.4                 | 8 %         |
| Finance and insurance, net per vehicle sold        | \$ 2,409                               | \$ 1,830 | \$ 579                 | 32 %        |

F&I, net revenue increased by \$67.7 million (63%) during the second quarter of 2022 as compared to the second quarter of 2021 and same store F&I, net revenue increased by \$8.4 million (8%) over the same period. We attribute the increase in all stores' F&I, net revenue to a 34% increase in total retail units sold and a 22% improvement in F&I PVR.

**TCA SEGMENT**

|                                      | For the Three Months Ended June 30, 2022 |  |   |
|--------------------------------------|--|--|---|
|                                      | As Reported                              | Dealership Inter-<br>company<br>Eliminations | TCA After<br>Dealership<br>Eliminations |
| (Dollars in millions)                |  |  |   |
| Finance and insurance, gross revenue | \$ 51.9                                  | \$ (23.6)                                    | \$ 28.3                                 |
| Finance and insurance, cost of sales | \$ 10.2                                  | \$ 5.1                                       | \$ 15.3                                 |
| Finance and insurance, gross profit  | \$ 41.7                                  | \$ (28.7)                                    | \$ 13.0                                 |

TCA offers a variety of F&I products, such as extended vehicle service contracts, prepaid maintenance contracts, GAP insurance, appearance protection contracts and lease wear-and-tear contracts. The majority of TCA's products are sold through affiliated LHM automobile dealerships.

Revenue generated by TCA is earned over the period of the related service product contract. The method for recognizing revenue is assigned based on contract type and expected claim patterns. Premium revenues are supplemented with investment gains or losses and income earned associated with the performance of TCA's investment portfolio. During the three months ended June 30, 2022, TCA generated \$51.9 million of revenue, consisting primarily of earned premium partially offset by a loss of \$8.1 million to the investment portfolio.

Direct expenses paid for the acquisition of contracts on which revenue has been received but not yet earned have been deferred and are amortized over the related contract period. Expenses are matched with earned premiums resulting in recognition over the life of the contracts. During the three months ended June 30, 2022, TCA recorded \$10.2 million of cost of sales consisting primarily of claims expense and amortization of deferred acquisition costs.

*Selling, General, and Administrative Expense—*

|  | For the Three Months Ended June 30, |                   |                 |                   |                     |                                       |
|--|-------------------------------------|-------------------|-----------------|-------------------|---------------------|---------------------------------------|
|  | 2022                                | % of Gross Profit | 2021            | % of Gross Profit | Increase (Decrease) | % of Gross Profit Increase (Decrease) |
| (Dollars in millions)                        |                                     |                   |                 |                   |                     |                                       |
| <b>As Reported:</b>                          |                                     |                   |                 |                   |                     |                                       |
| Personnel costs                              | \$ 240.1                            | 29.9 %            | \$ 132.5        | 26.6 %            | \$ 107.6            | 3.3 %                                 |
| Sales compensation                           | 76.9                                | 9.6 %             | 51.7            | 10.4 %            | 25.2                | (0.8)%                                |
| Share-based compensation                     | 4.7                                 | 0.6 %             | 3.7             | 0.7 %             | 1.0                 | (0.1)%                                |
| Outside services                             | 47.5                                | 5.9 %             | 26.2            | 5.3 %             | 21.3                | 0.6 %                                 |
| Advertising                                  | 14.2                                | 1.8 %             | 8.9             | 1.8 %             | 5.3                 | — %                                   |
| Rent   | 11.0                                | 1.4 %             | 9.1             | 1.8 %             | 1.9                 | (0.4)%                                |
| Utilities                                    | 7.2                                 | 0.9 %             | 4.5             | 0.9 %             | 2.7                 | — %                                   |
| Insurance                                    | 6.3                                 | 0.8 %             | 6.1             | 1.2 %             | 0.2                 | (0.4)%                                |
| Other  | 40.4                                | 4.9 %             | 27.0            | 5.5 %             | 13.4                | (0.6)%                                |
| Selling, general, and administrative expense | <u>\$ 448.3</u>                     | 55.8 %            | <u>\$ 269.7</u> | 54.2 %            | \$ 178.6            | 1.6 %                                 |
| Gross profit                                 | <u>\$ 802.7</u>                     |                   | <u>\$ 497.2</u> |                   |                     |                                       |
| <b>Same Store:</b>                           |                                     |                   |                 |                   |                     |                                       |
| Personnel costs                              | \$ 139.4                            | 28.5 %            | \$ 130.7        | 26.6 %            | \$ 8.7              | 1.9 %                                 |
| Sales compensation                           | 48.0                                | 9.8 %             | 51.0            | 10.4 %            | (3.0)               | (0.6)%                                |
| Share-based compensation                     | 4.7                                 | 1.0 %             | 3.7             | 0.8 %             | 1.0                 | 0.2 %                                 |
| Outside services                             | 30.0                                | 6.1 %             | 25.9            | 5.3 %             | 4.1                 | 0.8 %                                 |
| Advertising                                  | 6.0                                 | 1.2 %             | 8.7             | 1.8 %             | (2.7)               | (0.6)%                                |
| Rent   | 11.6                                | 2.4 %             | 9.1             | 1.9 %             | 2.5                 | 0.5 %                                 |
| Utilities                                    | 4.6                                 | 0.9 %             | 4.5             | 0.9 %             | 0.1                 | — %                                   |
| Insurance                                    | 4.2                                 | 0.9 %             | 6.0             | 1.2 %             | (1.8)               | (0.3)%                                |
| Other  | 24.7                                | 5.1 %             | 26.8            | 5.4 %             | (2.1)               | (0.3)%                                |
| Selling, general, and administrative expense | <u>\$ 273.2</u>                     | 55.9 %            | <u>\$ 266.4</u> | 54.3 %            | \$ 6.8              | 1.6 %                                 |
| Gross profit                                 | <u>\$ 488.3</u>                     |                   | <u>\$ 490.7</u> |                   |                     |                                       |

SG&A expense as a percentage of gross profit increased 160 basis points from 54.2% for the second quarter of 2021 to 55.8% for the second quarter of 2022. Same store SG&A expense as a percentage of gross profit also increased 160 basis points, from 54.3% for the second quarter of 2021 to 55.9% over the same period in 2022. The increase in SG&A expense as a percentage of gross profit is primarily the result of higher personnel costs. On a same store basis our personnel costs increased 190 basis points as a percentage of gross profit in the second quarter of 2022 as compared to the same quarter in the prior year. The Company continues to focus on retaining the efficiencies and productivity gained during the COVID-19 downturn while continuing to provide competitive benefits to our employees. Sales compensation as a percentage of gross profit decreased 60 basis points on a same store basis for the three months ended June 30, 2022 as compared to the three months ended June 30, 2021, due to decreased commission expense as a result of lower used vehicle gross profits.

*Depreciation and amortization —*

The \$8.0 million (79%) increase in depreciation and amortization expense for the three months ended June 30, 2022 as compared to the three months ended June 30, 2021 was primarily the result of depreciation associated with dealership acquisitions during the fourth quarter of 2021 and additional assets placed into service during 2022.

*Floor Plan Interest Expense —*

Floor plan interest expense decreased by \$0.6 million (29%) to \$1.5 million during the three months ended June 30, 2022 as compared to \$2.1 million for the three months ended June 30, 2021, primarily due to lower new vehicle inventory levels and a higher average floorplan offset balance.

*Other Interest Expense, net —*

The \$23.2 million (161%) increase in other interest expense, net is primarily the result of higher average outstanding debt during the three months ended June 30, 2022. During the fourth quarter of 2021, we incurred additional debt to finance the acquisitions of the Larry H. Miller and Stevinson automotive groups resulting in higher interest expense during the quarter.

*Loss on Dealership Divestitures, net—*

During the three months ended June 30, 2022, we divested three franchise (three dealership locations) and one collision center and recorded a preliminary pre-tax net loss of \$28.7 million.

*Income Tax Expense —*

The \$16.5 million (33%) increase in income tax expense was primarily the result of a \$65.8 million (33%) increase in income before income taxes. Our effective tax rate for the three months ended June 30, 2022 was 24.8% compared to 24.7% in the prior comparative period. We expect our effective tax rate for 2022 to be around 25%.

**CONSOLIDATED RESULTS OF OPERATIONS**
**Six Months Ended June 30, 2022 Compared to the Six Months Ended June 30, 2021**

|  | For the Six Months Ended June<br>30, |                 | Increase<br>(Decrease) | %<br>Change |
|--|--------------------------------------|-----------------|------------------------|-------------|
|  | 2022                                 | 2021            |                        |             |
| (Dollars in millions, except per share data) |                                      |                 |                        |             |
| <b>REVENUE:</b>                              |                                      |                 |                        |             |
| New vehicle                                  | \$ 3,720.1                           | \$ 2,520.1      | \$ 1,200.0             | 48 %        |
| Used vehicle                                 | 2,713.4                              | 1,507.1         | 1,206.3                | 80 %        |
| Parts and service                            | 1,022.1                              | 554.4           | 467.7                  | 84 %        |
| Finance and insurance, net                   | 406.4                                | 195.3           | 211.1                  | 108 %       |
| <b>TOTAL REVENUE</b>                         | <b>7,862.0</b>                       | <b>4,776.9</b>  | <b>3,085.1</b>         | <b>65 %</b> |
| <b>GROSS PROFIT:</b>                         |                                      |                 |                        |             |
| New vehicle                                  | 444.4                                | 199.6           | 244.8                  | 123 %       |
| Used vehicle                                 | 203.5                                | 139.3           | 64.2                   | 46 %        |
| Parts and service                            | 566.9                                | 345.7           | 221.2                  | 64 %        |
| Finance and insurance, net                   | 379.9                                | 195.3           | 184.6                  | 95 %        |
| <b>TOTAL GROSS PROFIT</b>                    | <b>1,594.7</b>                       | <b>879.9</b>    | <b>714.8</b>           | <b>81 %</b> |
| <b>OPERATING EXPENSES:</b>                   |                                      |                 |                        |             |
| Selling, general, and administrative         | 903.8                                | 509.5           | 394.3                  | 77 %        |
| Depreciation and amortization                | 36.5                                 | 19.9            | 16.6                   | 83 %        |
| Other operating income, net                  | (1.9)                                | (4.2)           | 2.3                    | (55)%       |
| <b>INCOME FROM OPERATIONS</b>                | <b>656.3</b>                         | <b>354.7</b>    | <b>301.6</b>           | <b>85 %</b> |
| <b>OTHER EXPENSES:</b>                       |                                      |                 |                        |             |
| Floor plan interest expense                  | 4.1                                  | 5.0             | (0.9)                  | (18)%       |
| Other interest expense, net                  | 75.2                                 | 28.4            | 46.8                   | 165 %       |
| Gain on dealership divestitures, net         | (4.4)                                | —               | (4.4)                  | — %         |
| Total other expenses, net                    | 74.9                                 | 33.4            | 41.5                   | 124 %       |
| <b>INCOME BEFORE INCOME TAXES</b>            | <b>581.4</b>                         | <b>321.3</b>    | <b>260.1</b>           | <b>81 %</b> |
| Income tax expense                           | 142.3                                | 76.4            | 65.9                   | 86 %        |
| <b>NET INCOME</b>                            | <b>\$ 439.1</b>                      | <b>\$ 244.9</b> | <b>\$ 194.2</b>        | <b>79 %</b> |
| Net income per share—Diluted                 | <b>\$ 19.52</b>                      | <b>\$ 12.56</b> | <b>\$ 6.96</b>         | <b>55 %</b> |

|   | <b>For the Six Months Ended June 30,</b> |               |
|---|--|---------------|
|   | <b>2022</b>                              | <b>2021</b>   |
| <b>REVENUE MIX PERCENTAGES:</b>                         |  |               |
| New vehicle   | 47.3 %                                   | 52.8 %        |
| Used vehicle retail                                     | 31.7 %                                   | 28.6 %        |
| Used vehicle wholesale                                  | 2.8 %                                    | 2.9 %         |
| Parts and service                                       | 13.0 %                                   | 11.6 %        |
| Finance and insurance, net                              | 5.2 %                                    | 4.1 %         |
| Total revenue   | 100.0 %                                  | 100.0 %       |
| <b>GROSS PROFIT MIX PERCENTAGES:</b>                    |  |               |
| New vehicle   | 27.9 %                                   | 22.7 %        |
| Used vehicle retail                                     | 12.4 %                                   | 13.7 %        |
| Used vehicle wholesale                                  | 0.4 %                                    | 2.1 %         |
| Parts and service                                       | 35.5 %                                   | 39.3 %        |
| Finance and insurance, net                              | 23.8 %                                   | 22.2 %        |
| Total gross profit                                      | 100.0 %                                  | 100.0 %       |
| <b>GROSS PROFIT MARGIN</b>                              | <b>20.3 %</b>                            | <b>18.4 %</b> |
| <b>SG&amp;A EXPENSE AS A PERCENTAGE OF GROSS PROFIT</b> | <b>56.7 %</b>                            | <b>57.9 %</b> |

Total revenue for the six months ended June 30, 2022 increased by \$3.09 billion (65%) compared to the six months ended June 30, 2021, due to a \$1.20 billion (48%) increase in new vehicle revenue, a \$1.21 billion (80%) increase in used vehicle revenue, a \$467.7 million (84%) increase in parts and service revenue and a \$211.1 million (108%) increase in F&I, net revenue. The \$714.8 million (81%) increase in gross profit during the six months ended June 30, 2022 was driven by a \$244.8 million (123%) increase in new vehicle gross profit, a \$221.2 million (64%) increase in parts and service gross profit, a \$184.6 million (95%) increase in F&I, net gross profit and a \$64.2 million (46%) increase in used vehicle gross profit.

Income from operations during the six months ended June 30, 2022 increased by \$301.6 million (85%), compared to the six months ended June 30, 2021, due to the \$714.8 million (81%) increase in gross profit, partially offset by a \$394.3 million (77%) increase in SG&A expense, a \$16.6 million (83%) increase in depreciation and amortization expense and a \$2.3 million (55%) decrease in other operating expense, net.

Total other expenses, net increased by \$41.5 million (124%), primarily as a result of a \$46.8 million (165%) increase in other interest expense, net partially offset by a \$0.9 million (18%) decrease in floor plan interest expense and a \$4.4 million gain on dealership divestitures, net during the six months ended June 30, 2022 when compared to the prior year period. Income before income taxes increased \$260.1 million to \$581.4 million for the six months ended June 30, 2022. Overall, net income increased by \$194.2 million (79%) during the six months ended June 30, 2022 as compared to the six months ended June 30, 2021.

The Company's results for the first six months of 2022 include the results of our dealerships acquired in the fourth quarter of 2021. Same store amounts consist of information from dealerships for identical months in each comparative period, commencing with the first month we owned the dealership. Additionally, amounts related to divested dealerships are excluded from each comparative period.

**DEALERSHIP SEGMENT**
*New Vehicle—*

|   | <b>For the Six Months Ended June<br/>30,</b> |                   | <b>Increase<br/>(Decrease)</b> | <b>%<br/>Change</b> |
|---|--|-------------------|--------------------------------|---------------------|
|   | <b>2022</b>                                  | <b>2021</b>       |                                |                     |
| <b>(Dollars in millions, except for per vehicle data)</b> |  |                   |                                |                     |
| <b>As Reported:</b>                                       |  |                   |                                |                     |
| <b>Revenue:</b>   |  |                   |                                |                     |
| Luxury  | \$ 1,135.5                                   | \$ 1,126.2        | \$ 9.3                         | 1 %                 |
| Import  | 1,485.4                                      | 995.6             | 489.8                          | 49 %                |
| Domestic  | 1,099.2                                      | 398.3             | 700.9                          | 176 %               |
| Total new vehicle revenue                                 | <u>\$ 3,720.1</u>                            | <u>\$ 2,520.1</u> | \$ 1,200.0                     | 48 %                |
| <b>Gross profit:</b>                                      |  |                   |                                |                     |
| Luxury  | \$ 147.3                                     | \$ 106.6          | \$ 40.7                        | 38 %                |
| Import  | 183.2  | 62.1              | 121.1                          | 195 %               |
| Domestic  | 113.9  | 30.9              | 83.0                           | 269 %               |
| Total new vehicle gross profit                            | <u>\$ 444.4</u>                              | <u>\$ 199.6</u>   | \$ 244.8                       | 123 %               |
| <b>New vehicle units:</b>                                 |  |                   |                                |                     |
| Luxury  | 17,156                                       | 18,596            | (1,440)                        | (8)%                |
| Import  | 40,242                                       | 31,634            | 8,608                          | 27 %                |
| Domestic  | 20,473                                       | 8,754             | 11,719                         | 134 %               |
| Total new vehicle units                                   | <u>77,871</u>                                | <u>58,984</u>     | 18,887                         | 32 %                |
| <b>Same Store:</b>  |  |                   |                                |                     |
| <b>Revenue:</b>   |  |                   |                                |                     |
| Luxury  | \$ 965.8                                     | \$ 1,094.4        | \$ (128.6)                     | (12)%               |
| Import  | 801.3  | 995.6             | (194.3)                        | (20)%               |
| Domestic  | 319.4  | 398.3             | (78.9)                         | (20)%               |
| Total new vehicle revenue                                 | <u>\$ 2,086.5</u>                            | <u>\$ 2,488.3</u> | \$ (401.8)                     | (16)%               |
| <b>Gross profit:</b>                                      |  |                   |                                |                     |
| Luxury  | \$ 121.4                                     | \$ 103.3          | \$ 18.1                        | 18 %                |
| Import  | 97.9   | 62.1              | 35.8                           | 58 %                |
| Domestic  | 30.3   | 30.9              | (0.6)                          | (2)%                |
| Total new vehicle gross profit                            | <u>\$ 249.6</u>                              | <u>\$ 196.3</u>   | \$ 53.3                        | 27 %                |
| <b>New vehicle units:</b>                                 |  |                   |                                |                     |
| Luxury  | 14,570                                       | 18,039            | (3,469)                        | (19)%               |
| Import  | 22,379                                       | 31,634            | (9,255)                        | (29)%               |
| Domestic  | 6,296  | 8,754             | (2,458)                        | (28)%               |
| Total new vehicle units                                   | <u>43,245</u>                                | <u>58,427</u>     | (15,182)                       | (26)%               |

*New Vehicle Metrics—*

|                                   | <b>For the Six Months Ended June 30,</b> |             | <b>Increase<br/>(Decrease)</b> | <b>%<br/>Change</b> |
|-----------------------------------|--|-------------|--------------------------------|---------------------|
|                                   | <b>2022</b>                              | <b>2021</b> |                                |                     |
| <b>As Reported:</b>               |  |             |                                |                     |
| Revenue per new vehicle sold      | \$ 47,773                                | \$ 42,725   | \$ 5,048                       | 12 %                |
| Gross profit per new vehicle sold | \$ 5,707                                 | \$ 3,384    | \$ 2,323                       | 69 %                |
| New vehicle gross margin          | 11.9 %                                   | 7.9 %       | 4.0 %                          |                     |
| <b>Luxury:</b>                    |  |             |                                |                     |
| Gross profit per new vehicle sold | \$ 8,586                                 | \$ 5,732    | \$ 2,854                       | 50 %                |
| New vehicle gross margin          | 13.0 %                                   | 9.5 %       | 3.5 %                          |                     |
| <b>Import:</b>                    |  |             |                                |                     |
| Gross profit per new vehicle sold | \$ 4,552                                 | \$ 1,963    | \$ 2,589                       | 132 %               |
| New vehicle gross margin          | 12.3 %                                   | 6.2 %       | 6.1 %                          |                     |
| <b>Domestic:</b>                  |  |             |                                |                     |
| Gross profit per new vehicle sold | \$ 5,563                                 | \$ 3,530    | \$ 2,033                       | 58 %                |
| New vehicle gross margin          | 10.4 %                                   | 7.8 %       | 2.6 %                          |                     |
| <b>Same Store:</b>                |  |             |                                |                     |
| Revenue per new vehicle sold      | \$ 48,248                                | \$ 42,588   | \$ 5,660                       | 13 %                |
| Gross profit per new vehicle sold | \$ 5,772                                 | \$ 3,360    | \$ 2,412                       | 72 %                |
| New vehicle gross margin          | 12.0 %                                   | 7.9 %       | 4.1 %                          |                     |
| <b>Luxury:</b>                    |  |             |                                |                     |
| Gross profit per new vehicle sold | \$ 8,332                                 | \$ 5,726    | \$ 2,606                       | 46 %                |
| New vehicle gross margin          | 12.6 %                                   | 9.4 %       | 3.2 %                          |                     |
| <b>Import:</b>                    |  |             |                                |                     |
| Gross profit per new vehicle sold | \$ 4,375                                 | \$ 1,963    | \$ 2,412                       | 123 %               |
| New vehicle gross margin          | 12.2 %                                   | 6.2 %       | 6.0 %                          |                     |
| <b>Domestic:</b>                  |  |             |                                |                     |
| Gross profit per new vehicle sold | \$ 4,813                                 | \$ 3,530    | \$ 1,283                       | 36 %                |
| New vehicle gross margin          | 9.5 %                                    | 7.8 %       | 1.7 %                          |                     |

For the six months ended June 30, 2022, new vehicle revenue increased by \$1.20 billion (48%) as a result of a 32% increase in new vehicle units sold and a 12% increase in revenue per new vehicle sold. On a same store new vehicle revenue decreased by \$401.8 million (16%) as the result of a 26% decrease in new vehicle units sold partially offset by a 13% increase in revenue per unit sold.

For the six months ended June 30, 2022, new vehicle gross profit and same store new vehicle gross profit increased by \$244.8 million (123%) and \$53.3 million (27%), respectively. Same store new vehicle gross margin for the six months ended June 30, 2022 improved 410 basis points to 12.0%.

The SAAR for new vehicle sales in the U.S. during the six months ended June 30, 2022 was 13.5 million compared to 17.1 million during the six months ended June 30, 2021, a 21% decrease. The Company's increase in new vehicle sales revenue for the six months ended June 30, 2022 over the same period in the prior year is primarily attributable to the Company's acquisitions of the Larry H. Miller and Stevinson dealership groups in December 2021. We continue to be negatively impacted by a scarcity of new vehicle inventory as a result of manufacturer production challenges arising from the semiconductor chips, parts and other key components shortage.



*Used Vehicle—*

|   | <b>For the Six Months Ended June<br/>30,</b> |                   | <b>Increase<br/>(Decrease)</b> | <b>%<br/>Change</b> |
|---|--|-------------------|--------------------------------|---------------------|
|   | <b>2022</b>                                  | <b>2021</b>       |                                |                     |
| <b>(Dollars in millions, except for per vehicle data)</b> |  |                   |                                |                     |
| <b>As Reported:</b>                                       |  |                   |                                |                     |
| <b>Revenue:</b>   |  |                   |                                |                     |
| Used vehicle retail revenue                               | \$ 2,489.7                                   | \$ 1,366.9        | \$ 1,122.8                     | 82 %                |
| Used vehicle wholesale revenue                            | 223.7  | 140.2             | 83.5                           | 60 %                |
| Used vehicle revenue                                      | <u>\$ 2,713.4</u>                            | <u>\$ 1,507.1</u> | \$ 1,206.3                     | 80 %                |
| <b>Gross profit:</b>                                      |  |                   |                                |                     |
| Used vehicle retail gross profit                          | \$ 196.6                                     | \$ 121.0          | \$ 75.6                        | 62 %                |
| Used vehicle wholesale gross profit                       | 6.9  | 18.3              | (11.4)                         | (62)%               |
| Used vehicle gross profit                                 | <u>\$ 203.5</u>                              | <u>\$ 139.3</u>   | \$ 64.2                        | 46 %                |
| <b>Used vehicle retail units:</b>                         |  |                   |                                |                     |
| Used vehicle retail units                                 | <u>78,154</u>                                | <u>50,375</u>     | 27,779                         | 55 %                |
| <b>Same Store:</b>  |  |                   |                                |                     |
| <b>Revenue:</b>   |  |                   |                                |                     |
| Used vehicle retail revenue                               | \$ 1,627.1                                   | \$ 1,346.2        | \$ 280.9                       | 21 %                |
| Used vehicle wholesale revenue                            | 91.1   | 139.4             | (48.3)                         | (35)%               |
| Used vehicle revenue                                      | <u>\$ 1,718.2</u>                            | <u>\$ 1,485.6</u> | \$ 232.6                       | 16 %                |
| <b>Gross profit:</b>                                      |  |                   |                                |                     |
| Used vehicle retail gross profit                          | \$ 112.1                                     | \$ 119.5          | \$ (7.4)                       | (6)%                |
| Used vehicle wholesale gross profit                       | 2.0  | 18.1              | (16.1)                         | (89)%               |
| Used vehicle gross profit                                 | <u>\$ 114.1</u>                              | <u>\$ 137.6</u>   | \$ (23.5)                      | (17)%               |
| <b>Used vehicle retail units:</b>                         |  |                   |                                |                     |
| Used vehicle retail units                                 | <u>50,488</u>                                | <u>49,680</u>     | 808                            | 2 %                 |

*Used Vehicle Metrics—*

|  | <b>For the Six Months Ended June 30,</b> |                  | <b>Increase<br/>(Decrease)</b> | <b>%<br/>Change</b> |
|--|--|------------------|--------------------------------|---------------------|
|  | <b>2022</b>                              | <b>2021</b>      |                                |                     |
| <b>As Reported:</b>                    |  |                  |                                |                     |
| Revenue per used vehicle retailed      | <u>\$ 31,856</u>                         | <u>\$ 27,134</u> | \$ 4,722                       | 17 %                |
| Gross profit per used vehicle retailed | <u>\$ 2,516</u>                          | <u>\$ 2,402</u>  | \$ 114                         | 5 %                 |
| Used vehicle retail gross margin       | <u>7.9 %</u>                             | <u>8.9 %</u>     | (1.0)%                         |                     |
| <b>Same Store:</b>                     |  |                  |                                |                     |
| Revenue per used vehicle retailed      | <u>\$ 32,227</u>                         | <u>\$ 27,097</u> | \$ 5,130                       | 19 %                |
| Gross profit per used vehicle retailed | <u>\$ 2,220</u>                          | <u>\$ 2,405</u>  | \$ (185)                       | (8)%                |
| Used vehicle retail gross margin       | <u>6.9 %</u>                             | <u>8.9 %</u>     | (2.0)%                         |                     |

Used vehicle revenue increased by \$1.21 billion (80%) due to a \$1.12 billion (82%) increase in used vehicle retail revenue, and a \$83.5 million (60%) increase in used vehicle wholesale revenue. Same store used vehicle revenue increased by \$232.6 million (16%) due to a \$280.9 million (21%) increase in used vehicle retail revenue partially offset by a \$48.3 million (35%) decrease in used vehicle wholesale revenues.

For the six months ended June 30, 2022, gross profit margins decreased by 100 basis points to 7.9%. We continue to see strong demand for used vehicles as a result of new vehicle inventory shortages that have arisen due to supply chain challenges. Used vehicle retail gross profit increased \$75.6 million (62%) for the six months ended June 30, 2022 and decreased \$7.4 million (6%) on a same store basis. On a same-store basis, our gross profit per used vehicle retailed decreased \$185 (8%) when compared to the prior year period.

Parts and Service—

|  | For the Six Months Ended June<br>30, |                 | Increase<br>(Decrease) | %<br>Change |
|--|--------------------------------------|-----------------|------------------------|-------------|
|  | 2022                                 | 2021            |                        |             |
| (Dollars in millions)  |                                      |                 |                        |             |
| <b>As Reported:</b>  |                                      |                 |                        |             |
| Parts and service revenue  | \$ 1,038.1                           | \$ 554.4        | \$ 483.7               | 87 %        |
| <b>Parts and service gross profit:</b>                                   |                                      |                 |                        |             |
| Customer pay   | \$ 357.0                             | \$ 203.9        | \$ 153.1               | 75 %        |
| Warranty   | 67.0                                 | 51.1            | 15.9                   | 31 %        |
| Wholesale parts  | 40.0                                 | 15.0            | 25.0                   | 167 %       |
| Parts and service gross profit, excluding reconditioning and preparation | <u>\$ 464.0</u>                      | <u>\$ 270.0</u> | \$ 194.0               | 72 %        |
| Parts and service gross margin, excluding reconditioning and preparation | <u>44.7 %</u>                        | <u>48.7 %</u>   | (4.0)%                 |             |
| Reconditioning and preparation *   | <u>\$ 110.6</u>                      | <u>\$ 75.7</u>  | \$ 34.9                | 46 %        |
| Total parts and service gross profit                                     | <u>\$ 574.6</u>                      | <u>\$ 345.7</u> | \$ 228.9               | 66 %        |
| <b>Same Store:</b>   |                                      |                 |                        |             |
| Parts and service revenue  | \$ 612.9                             | \$ 547.4        | \$ 65.5                | 12 %        |
| <b>Parts and service gross profit:</b>                                   |                                      |                 |                        |             |
| Customer pay   | \$ 233.3                             | \$ 201.3        | \$ 32.0                | 16 %        |
| Warranty   | 40.8                                 | 50.4            | (9.6)                  | (19)%       |
| Wholesale parts  | 17.4                                 | 14.7            | 2.7                    | 18 %        |
| Parts and service gross profit, excluding reconditioning and preparation | <u>\$ 291.5</u>                      | <u>\$ 266.4</u> | \$ 25.1                | 9 %         |
| Parts and service gross margin, excluding reconditioning and preparation | <u>47.6 %</u>                        | <u>48.7 %</u>   | (1.1)%                 |             |
| Reconditioning and preparation *   | <u>\$ 75.0</u>                       | <u>\$ 74.6</u>  | \$ 0.4                 | 1 %         |
| Total parts and service gross profit                                     | <u>\$ 366.5</u>                      | <u>\$ 341.0</u> | \$ 25.5                | 7 %         |

\* Reconditioning and preparation represents the gross profit earned by our parts and service departments for internal work performed is included as a reduction of Parts and Service Cost of Sales in the accompanying Condensed Consolidated Statements of Income upon the sale of the vehicle.

The \$483.7 million (87%) increase in parts and service revenue was primarily due to a \$301.7 million (79%) increase in customer pay revenue, a \$148.7 million (183%) increase in wholesale parts revenue and a \$33.3 million (36%) increase in warranty revenue. Same store parts and service revenue increased by \$65.5 million (12%) from \$547.4 million for the six months ended June 30, 2021 to \$612.9 million for the six months ended June 30, 2022. The increase in same store parts and service revenue was due to a \$60.3 million (16%) increase in customer pay revenue, a \$19.5 million (24%) increase in wholesale parts revenue partially offset by a \$14.3 million (16%) decrease in warranty revenue.

Parts and service gross profit, excluding reconditioning and preparation, increased by \$194.0 million (72%) to \$464.0 million, and same store gross profit, excluding reconditioning and preparation, increased by \$25.1 million (9%) to \$291.5 million.

*Finance and Insurance, net—*

|   | <b>For the Six Months Ended June 30,</b> |             | <b>Increase<br/>(Decrease)</b> | <b>%<br/>Change</b> |
|---|--|-------------|--------------------------------|---------------------|
|   | <b>2022</b>                              | <b>2021</b> |                                |                     |
| <b>(Dollars in millions, except for per vehicle data)</b> |  |             |                                |                     |
| <b>As Reported:</b>                                       |  |             |                                |                     |
| Finance and insurance, net                                | \$ 352.6                                 | \$ 195.3    | \$ 157.3                       | 81 %                |
| Finance and insurance, net per vehicle sold               | \$ 2,260                                 | \$ 1,786    | \$ 474                         | 27 %                |
| <b>Same Store:</b>  |  |             |                                |                     |
| Finance and insurance, net                                | \$ 224.3                                 | \$ 193.4    | \$ 30.9                        | 16 %                |
| Finance and insurance, net per vehicle sold               | \$ 2,393                                 | \$ 1,789    | \$ 604                         | 34 %                |

F&I revenue, net increased \$157.3 million (81%) during the six months ended June 30, 2022 when compared to the six months ended June 30, 2021, and same store F&I revenue, net increased by \$30.9 million (16%) over the same period. F&I revenue, net increased as a result of a 43% increase in new and used retail unit sales for the six months ended June 30, 2022 as compared to the six months ended June 30, 2021. For the six months ended June 30, 2022, the Company was able to improve the F&I PVR by \$474 per unit (27%) over the comparable prior year period.

**TCA SEGMENT**

|                                      | <b>For the Six Months Ended June 30, 2022</b> |   |  |
|--------------------------------------|---|---|--|
|                                      | <b>As Reported</b>                            | <b>Dealership Inter-<br/>company<br/>Eliminations</b> | <b>TCA After<br/>Dealership<br/>Eliminations</b> |
| <b>(Dollars in millions)</b>         |   |   |  |
| Finance and insurance, gross revenue | \$ 109.2                                      | \$ (55.4)   | \$ 53.8  |
| Finance and insurance, cost of sales | \$ 10.9                                       | \$ 15.6   | \$ 26.5  |
| Finance and insurance, gross profit  | \$ 98.3                                       | \$ (71.0)   | \$ 27.3  |

TCA offers a variety of F&I products, such as extended vehicle service contracts, prepaid maintenance contracts, GAP insurance, appearance protection contracts and lease wear-and-tear contracts. The majority of TCA's products are sold through affiliated LHM automobile dealerships.

Revenue generated by TCA is earned over the period of the related service product contract. The method for recognizing revenue is assigned based on contract type and expected claim patterns. Premium revenues are supplemented with investment gains or losses and income earned associated with the performance of TCA's investment portfolio. During the six months ended June 30, 2022, TCA generated \$109.2 million of revenue, consisting primarily of earned premium partially offset by a loss of \$10.8 million to the investment portfolio.

Direct expenses paid for the acquisition of contracts on which revenue has been received but not yet earned have been deferred and are amortized over the related contract period. Expenses are matched with earned premiums resulting in recognition over the life of the contracts. During the six months ended June 30, 2022, TCA recorded \$10.9 million of cost of sales consisting primarily of claims expense and amortization of deferred acquisition costs.

**CONSOLIDATED**
*Selling, General, and Administrative Expense—*

|  | For the Six Months Ended June 30, |                   |                 |                   |                     |                                       |
|--|-----------------------------------|-------------------|-----------------|-------------------|---------------------|---------------------------------------|
|  | 2022                              | % of Gross Profit | 2021            | % of Gross Profit | Increase (Decrease) | % of Gross Profit Increase (Decrease) |
| (Dollars in millions)                        |                                   |                   |                 |                   |                     |                                       |
| <b>As Reported:</b>                          |                                   |                   |                 |                   |                     |                                       |
| Personnel costs                              | \$ 485.1                          | 30.4 %            | \$ 249.7        | 28.4 %            | \$ 235.4            | 2.0 %                                 |
| Sales compensation                           | 152.6                             | 9.6 %             | 89.0            | 10.1 %            | 63.6                | (0.5)%                                |
| Share-based compensation                     | 11.7                              | 0.7 %             | 8.3             | 0.9 %             | 3.4                 | (0.2)%                                |
| Outside services                             | 92.9                              | 5.8 %             | 50.2            | 5.7 %             | 42.7                | 0.1 %                                 |
| Advertising                                  | 28.4                              | 1.8 %             | 16.5            | 1.9 %             | 11.9                | (0.1)%                                |
| Rent   | 23.2                              | 1.5 %             | 20.3            | 2.3 %             | 2.9                 | (0.8)%                                |
| Utilities                                    | 15.1                              | 0.9 %             | 8.8             | 1.0 %             | 6.3                 | (0.1)%                                |
| Insurance                                    | 15.0                              | 0.9 %             | 13.4            | 1.5 %             | 1.6                 | (0.6)%                                |
| Other  | 79.8                              | 5.1 %             | 53.3            | 6.1 %             | 26.5                | (1.0)%                                |
| Selling, general, and administrative expense | <u>\$ 903.8</u>                   | 56.7 %            | <u>\$ 509.5</u> | 57.9 %            | \$ 394.3            | (1.2)%                                |
| Gross profit                                 | <u>\$ 1,594.7</u>                 |                   | <u>\$ 879.9</u> |                   |                     |                                       |
| <b>Same Store:</b>                           |                                   |                   |                 |                   |                     |                                       |
| Personnel costs                              | \$ 277.4                          | 29.1 %            | \$ 246.3        | 28.4 %            | \$ 31.1             | 0.7 %                                 |
| Sales compensation                           | 94.4                              | 9.9 %             | 88.0            | 10.1 %            | 6.4                 | (0.2)%                                |
| Share-based compensation                     | 11.7                              | 1.2 %             | 8.3             | 1.0 %             | 3.4                 | 0.2 %                                 |
| Outside services                             | 57.3                              | 6.0 %             | 49.5            | 5.7 %             | 7.8                 | 0.3 %                                 |
| Advertising                                  | 11.9                              | 1.2 %             | 16.2            | 1.9 %             | (4.3)               | (0.7)%                                |
| Rent   | 22.3                              | 2.3 %             | 20.3            | 2.3 %             | 2.0                 | — %                                   |
| Utilities                                    | 9.2                               | 1.0 %             | 8.7             | 1.0 %             | 0.5                 | — %                                   |
| Insurance                                    | 10.0                              | 1.0 %             | 13.2            | 1.5 %             | (3.2)               | (0.5)%                                |
| Other  | \$ 48.5                           | 5.2 %             | \$ 52.9         | 6.1 %             | (4.4)               | (0.9)%                                |
| Selling, general, and administrative expense | <u>\$ 542.7</u>                   | 56.9 %            | <u>\$ 503.4</u> | 58.0 %            | \$ 39.3             | (1.1)%                                |
| Gross profit                                 | <u>\$ 954.5</u>                   |                   | <u>\$ 868.3</u> |                   |                     |                                       |

SG&A expense as a percentage of gross profit decreased 120 basis points from 57.9% for the six months ended June 30, 2021 to 56.7% for the six months ended June 30, 2022, while same store SG&A expense as a percentage of gross profit decreased 110 basis points to 56.9% over the same period. The decrease in SG&A as a percentage of gross profit during the six months ended June 30, 2022, is primarily the result of higher sales volume and gross profits earned on new and used vehicle sales. On a total company basis, Personnel costs and Sales compensation increased by \$235.4 million and \$63.6 million, respectively, for the six months ended June 30, 2022 as compared to the six months ended June 30, 2021, primarily due to the inclusion of the Larry H. Miller and Stevinson acquisitions in year-to-date 2022 results.

*Floor Plan Interest Expense—*

Floor plan interest expense decreased by \$0.9 million (18%) to \$4.1 million during the six months ended June 30, 2022 compared to \$5.0 million during the six months ended June 30, 2021 primarily as a result of lower new vehicle inventory levels and a higher average floorplan offset balance.

*Other Interest Expense —*

Other interest expense increased \$46.8 million (165%) during the six months ended June 30, 2022 from \$28.4 million during the six months ended June 30, 2021 to \$75.2 million during the six months ended June 30, 2022. During the fourth quarter of 2021, we incurred additional debt to finance the acquisitions of the Larry H. Miller and Stevinson automotive groups resulting in higher year-to-date interest expense.

### *Gain on Dealership Divestitures, net—*

During the six months ended June 30, 2022, we sold one franchise (one dealership location) in the St. Louis, Missouri, three franchises (three dealership locations) and one collision center in Denver, Colorado, two franchises (two dealership locations) in Spokane, Washington and one franchises (one dealership locations) in Albuquerque, New Mexico. The Company recorded a pre-tax gain of \$4.4 million for the six months ended June 30, 2022. The gain or loss on six dealership divestitures is preliminary pending final purchase accounting entries in connection with the LHM Acquisition.

### *Income Tax Expense—*

The \$65.9 million increase in income tax expense was primarily the result of a \$260.1 million increase in income before income taxes. Our effective tax rate for the six months ended June 30, 2022 was 24.5% compared to 23.8% in the prior year period.

## **LIQUIDITY AND CAPITAL RESOURCES**

As of June 30, 2022, we had total available liquidity of \$1.01 billion, which consisted of cash and cash equivalents of \$14.8 million (excluding \$85.3 million held by TCA), \$229.3 million (excluding \$75.0 million held by TCA) of available funds in our floor plan offset accounts, \$389.0 million of availability under our new vehicle floorplan facility that is able to be converted to revolving credit facility, \$48.3 million of availability under our revolving credit facility, and \$327.8 million of availability under our used vehicle revolving floor plan facility. The borrowing capacities under our revolving credit facility and our used vehicle revolving floor plan facility are limited by borrowing base calculations and, from time-to-time, may be further limited by our required compliance with certain financial covenants. As of June 30, 2022, these financial covenants did not further limit our availability under our other credit facilities. For more information on our financial covenants, see "Covenants" and "Share Repurchases and Dividend Restrictions" below.

We continually evaluate our liquidity and capital resources based upon (i) our cash and cash equivalents on hand, (ii) the funds that we expect to generate through future operations, (iii) current and expected borrowing availability under our 2019 Senior Credit Facility (discussed further below), (iv) amounts in our new vehicle floor plan notes payable offset accounts, and (v) the potential impact of our capital allocation strategy and any contemplated or pending future transactions, including, but not limited to, financings, acquisitions, dispositions, equity and/or debt repurchases, dividends, or other capital expenditures. We believe we will have sufficient liquidity to meet our debt service and working capital requirements; commitments and contingencies; debt repayment, maturity and repurchase obligations; acquisitions; capital expenditures; and any operating requirements for at least the next twelve months.

### *LHM Acquisition*

On December 17, 2021, the Company completed the LHM Acquisition, which included 54 new vehicle dealerships, seven used vehicle stores, 11 collision centers, a used vehicle wholesale business, the real property related thereto, and the entities comprising the TCA business for a total purchase price of \$3.48 billion. The purchase price was financed through a combination of cash, proceeds from the issuance of common stock and borrowings including the issuance of the 2029 Senior Notes and 2032 Senior Notes, the drawdown on the 2021 Real Estate Facility and the 2019 Senior Credit Facility and other floor plan borrowings.

### *Material Indebtedness*

We currently are party to the following material credit facilities and agreements, and have the following material indebtedness outstanding. For a more detailed description of the material terms of these agreements and facilities, and this indebtedness, please refer to Note 14 "Debt" in our Annual Report on Form 10-K for the fiscal year ended December 31, 2021. Additionally, as further outlined below, during the quarter ended June 30, 2022, we amended our LIBOR-based debt arrangements and related hedging financial instruments to revise their interest basis from LIBOR to a Secured Overnight Financing Rate ("SOFR"). See Note 9 "Debt" in our Condensed Consolidated Financial Statements contained herein for details of the revisions to the applicable debt arrangements.

- **2019 Senior Credit Facility**—On September 25, 2019, the Company and certain of its subsidiaries entered into the 2019 third amended and restated credit agreement with Bank of America, as administrative agent, and the other lenders party thereto (the "2019 Senior Credit Facility"). In connection with the LHM Acquisition, the Company entered into a 2021 Third Amendment to the 2019 Senior Credit Facility on October 29, 2021. As amended, the 2019 Senior Credit Agreement provides for the following:

*Revolving Credit Facility*—A \$450.0 million Revolving Credit Facility for, among other things, acquisitions, working capital and capital expenditures, including a \$50.0 million sub-limit for letters of credit. As described

below, as of June 30, 2022, we converted \$389.0 million of availability from the Revolving Credit Facility to the New Vehicle Floor Plan Facility (as defined below), resulting in \$61.0 million of borrowing capacity. In addition, as of June 30, 2022, we had \$12.7 million in outstanding letters of credit, resulting in \$48.3 million of borrowing availability. We began the year with \$169.0 million drawn on our revolving credit facility. During the six months ended June 30, 2022, we had additional borrowings of \$330.0 million and \$499.0 million in repayments resulting in no outstanding borrowings as of June 30, 2022.

***New Vehicle Floor Plan Facility***—A \$1.75 billion New Vehicle Floor Plan Facility which allows us to transfer cash as an offset to floor plan notes payable. These transfers reduce the amount of outstanding new vehicle floor plan notes payable that would otherwise accrue interest, while retaining the ability to transfer amounts from the offset account into our operating cash accounts within the same day. As a result of the use of this floor plan offset account, we experienced a reduction in Floor Plan Interest Expense on our Condensed Consolidated Statements of Income. As of June 30, 2022, we had \$17.8 million outstanding under the New Vehicle Floor Plan Facility, which includes \$1.1 million classified as Liabilities associated with assets held for sale on our Condensed Consolidated Balance Sheet and is net of \$300.3 million in our floor plan offset account.

***Used Vehicle Floor Plan Facility***—A \$350.0 million Used Vehicle Floor Plan Facility to finance the acquisition of used vehicle inventory and for working capital and capital expenditures, as well as to refinance used vehicles. We began the year with \$294.0 million drawn on our used vehicle floor plan facility. During the six months ended June 30, 2022, we had additional borrowings of \$100.0 million and \$394.0 million in repayments resulting in no outstanding borrowings as of June 30, 2022. Our borrowing capacity under the Used Vehicle Floor Plan Facility was \$327.8 million based on our borrowing base calculation as of June 30, 2022.

Subject to compliance with certain conditions, the 2019 Senior Credit Agreement provides that we have the ability, at our option and subject to the receipt of additional commitments from existing or new lenders, to increase the size of the facilities by up to \$350.0 million in the aggregate without lender consent.

At our option, we have the ability to re-designate a portion of our availability under the Revolving Credit Facility to the New Vehicle Floor Plan Facility or the Used Vehicle Floor Plan Facility. The maximum amount we are allowed to re-designate is determined based on aggregate commitments under the Revolving Credit Facility, less \$50.0 million. In addition, we are able to re-designate any amounts moved to the New Vehicle Floor Plan Facility or the Used Vehicle Floor Plan Facility back to the Revolving Credit Facility. As of June 30, 2022, \$389.0 million of availability under the Revolving Credit Facility was re-designated to the New Vehicle Floor Plan Facility. We re-designated this amount to take advantage of the lower commitment fee rates on the New Vehicle Floor Plan Facility when compared to the Revolving Credit Facility.

On May 25, 2022, the Company and certain of its subsidiaries entered into the fourth amendment to the 2019 third amended and restated credit agreement with Bank of America, as administrative agent, and the other lenders party thereto (the "2019 Senior Credit Facility"), to replace the benchmark reference rate of LIBOR to SOFR. See Note 9 "Debt" for further details.

In addition to the payment of interest on borrowings outstanding under the 2019 Senior Credit Facility, we are required to pay a quarterly commitment fee on total unused commitments thereunder. The fee for unused commitments under the Revolving Credit Facility is between 0.15% and 0.40% per year, based on the Company's total lease adjusted leverage ratio, and the fee for unused commitments under the New Vehicle Facility Floor Plan and the Used Vehicle Facility Floor Plan Facility is 0.15% per year.

- **Manufacturer affiliated new vehicle floor plan and other financing facilities**—We have a floor plan facility with the Ford Motor Credit Company ("Ford Credit") to purchase new Ford and Lincoln vehicle inventory. Our floor plan facility with Ford Credit was amended in July 2020 and can be terminated by either the Company or Ford Credit with a 30-day notice period. We have also established a floor plan offset account with Ford Credit, which operates in a similar manner to our floor plan offset account with Bank of America. As of June 30, 2022, we had \$27.7 million, which is net of \$4.0 million in our floor plan offset account, outstanding under our floor plan facility. Additionally, we had \$142.6 million, outstanding under our 2019 Senior Credit Facility and facilities with certain manufacturers for the financing of loaner vehicles, which are presented within Accounts payable and accrued liabilities in our Condensed Consolidated Balance Sheets. Neither our floor plan facility with Ford Credit nor our facilities for loaner vehicles have stated borrowing limitations.

- **2029 and 2032 Senior Notes** — On November 19, 2021, the Company completed its offering of \$800.0 million aggregate principal amount of 4.625% senior notes due 2029 (the “2029 Senior Notes”) and \$600.0 million aggregate principal amount of 5.000% senior notes due 2032 (the “2032 Senior Notes”). The 2029 Senior Notes and 2032 Senior Notes mature on November 15, 2029 and February 15, 2032, respectively. Interest is payable semiannually, on November 15 and May 15 of each year. The 2029 Senior Notes and the 2032 Senior Notes were offered, together with additional borrowings and cash on hand, to (i) fund the LHM Acquisition and (ii) pay related fees and expenses.

The 2029 Notes and 2032 Notes have been fully and unconditionally guaranteed, on a joint and several basis, by substantially all of our subsidiaries other than the TCA Non-Guarantor Subsidiaries. In addition, the notes are subject to customary covenants, events of default and optional redemption revisions. The 2029 Notes and the 2032 Notes are not required to be registered under the Securities Act of 1933.

- **2028 and 2030 Senior Notes**—On February 19, 2020, the Company completed its offering of senior unsecured notes, consisting of \$525.0 million aggregate principal amount of the Existing 2028 Notes and \$600.0 million aggregate principal amount of the Existing 2030 Notes. The 2028 Notes and 2030 Notes mature on March 1, 2028 and March 1, 2030, respectively. Interest is payable semiannually, on March 1 and September 1 of each year. The 2028 Notes and the 2030 Notes were offered, together with additional borrowings and cash on hand, to (i) fund the acquisition of substantially all of the assets of Park Place, (ii) redeem all of our outstanding \$600.0 million aggregate principal amount of 6.0% Senior Subordinated Notes due 2024 (the “6.0% Notes”) and (iii) pay related fees and expenses.

On March 24, 2020, the Company delivered notice to the sellers terminating the 2019 Park Place Agreements and redeemed \$245.0 million aggregate principal million of the 2028 Notes and \$280.0 million aggregate principal amount of the 2030 Notes pursuant to a special mandatory redemption.

In September 2020, the Company completed an add-on issuance of \$250.0 million aggregate principal amount of additional senior notes consisting of \$125.0 million aggregate principal amount of additional 2028 Notes at a price of 101.00% of par, plus accrued interest from September 1, 2020, and \$125.0 million aggregate principal amount of additional 2030 Notes (together with the additional 2028 Notes, the “Additional Notes”) at a price of 101.75% of par, plus accrued interest from September 1, 2020 (the “September 2020 Offering”). After deducting the initial purchasers’ discounts of \$2.8 million, we received net proceeds of approximately \$250.6 million from the September Offering. The \$3.5 million premium paid by the initial purchasers of the Additional Notes was recorded as a component of long-term debt on our Condensed Consolidated Balance Sheet and is being amortized as a reduction of interest expense over the remaining term of the Notes. The proceeds of the September 2020 Offering were used to redeem the Seller Notes issued in connection with the Park Place Acquisition.

The 2028 Notes and the 2030 Notes are guaranteed, jointly and severally, on a senior unsecured basis, by each of our existing and future restricted subsidiaries, other than the TCA Non-Guarantor Subsidiaries. In addition, the notes are subject to customary covenants, events of default and optional redemption revisions. The 2028 Notes and the 2030 Notes were required to be registered under the Securities Act of 1933 within 270 days of the closing date for the offering of each respective series. The Company completed the registration of the 2028 Notes and 2030 Notes in October 2020.

- **Mortgage Financings**—We have multiple mortgage agreements with finance companies affiliated with our vehicle manufacturers (“captive mortgages”) and other lenders. As of June 30, 2022, we had total mortgage notes payable outstanding of \$69.0 million, which includes \$2.8 million classified as Liabilities associated with assets held for sale, which are collateralized by the associated real estate.
- **2021 Real Estate Facility**—On December 17, 2021, we entered into a real estate term loan credit agreement with Bank of America, N.A., as administrative agent and the other lenders party thereto, which provides for term loans in an aggregate amount equal to \$689.7 million (the “2021 Real Estate Facility”). As of June 30, 2022, we had \$677.9 million of outstanding borrowings under the 2021 Real Estate Facility. There is no further borrowing availability under the 2021 Real Estate Facility.
- **2021 BofA Real Estate Facility**—On May 10, 2021, we entered into a real estate term loan credit agreement (the “2021 BofA Real Estate Credit Agreement”), by and among the Company and certain of its subsidiaries, Bank of America, N.A., as administrative agent and the various financial institutions party thereto, as lenders, which provides for term loans in an aggregate amount equal to \$184.4 million, subject to customary terms and conditions (the “2021 BofA Real Estate Facility”). As of June 30, 2022, we had \$177.0 million of outstanding borrowings under the 2021 BofA Real Estate Facility. There is no further borrowing availability under the 2021 BofA Real Estate Credit Agreement. On May 25, 2022, certain of our subsidiaries entered into amendments to our 2021 BofA Real Estate

Facility to replace the benchmark reference rate of LIBOR to SOFR, effective June 1, 2022. See Note 9 "Debt" for further details.

- **2018 Bank of America Facility**—On November 13, 2018, we entered into a real estate term loan credit agreement (as amended, restated or supplemented from time-to-time, the "2018 BofA Real Estate Credit Agreement") with Bank of America, as lender, providing for term loans in an aggregate amount not to exceed \$128.1 million, subject to customary terms and conditions (the "2018 BofA Real Estate Facility"). Our right to make draws under the 2018 BofA Real Estate Facility terminated on November 13, 2019. All of the real property financed by an operating dealership subsidiary of the Company under the 2018 BofA Real Estate Facility is collateralized by first priority liens, subject to certain permitted exceptions. As of June 30, 2022, we had \$76.1 million of outstanding borrowings under the 2018 Bank of America Facility. There is no further borrowing availability under the 2018 BofA Real Estate Facility. On May 25, 2022, certain of our subsidiaries entered into an amendment to our 2018 BofA Real Estate Facility to replace the benchmark reference rate of LIBOR to SOFR, effective June 1, 2022. See Note 9 "Debt" for further details.
- **2018 Wells Fargo Master Loan Facility**—On November 16, 2018, certain of our subsidiaries entered into a master loan agreement (the "2018 Wells Fargo Master Loan Agreement") with Wells Fargo as lender, which provides for term loans to certain of our subsidiaries that are borrowers under the 2018 Wells Fargo Master Loan Agreement in an aggregate amount not to exceed \$100.0 million (the "2018 Wells Fargo Master Loan Facility"). Our right to make draws under the 2018 Wells Fargo Master Loan Facility terminated on June 30, 2020. On November 16, 2018 and June 26, 2020, we borrowed an aggregate amount of \$25.0 million and \$69.4 million, respectively, under the 2018 Wells Fargo Master Loan Facility, the proceeds of which were used for general corporate purposes. As of June 30, 2022, we had \$79.4 million, outstanding borrowings under the 2018 Wells Fargo Master Loan Facility. There is no further borrowing availability under the 2018 Wells Fargo Master Loan Facility. On and with effective from June 1, 2022, certain of our subsidiaries entered into an amendment to our 2018 Wells Fargo Master Loan Facility to replace the benchmark reference rate of LIBOR to SOFR. See Note 9 "Debt" for further details.
- **2015 Wells Fargo Master Loan Facility**—On February 3, 2015, certain of our subsidiaries entered into an amended and restated master loan agreement (the "2015 Wells Fargo Master Loan Agreement") with Wells Fargo Bank, National Association ("Wells Fargo"), as lender, which provides for term loans to certain of our subsidiaries that are borrowers under the 2015 Wells Fargo Master Loan Agreement in an aggregate amount not to exceed \$100.0 million (the "2015 Wells Fargo Master Loan Facility"). Borrowings under the 2015 Wells Fargo Master Loan Facility are guaranteed by us and are collateralized by the real property financed under the 2015 Wells Fargo Master Loan Facility. As of June 30, 2022, the outstanding balance under this agreement was \$50.7 million. There is no further borrowing availability under the 2015 Wells Fargo Master Loan Facility. On and with effect from June 1, 2022, certain of our subsidiaries entered into an amendment to our 2015 Wells Fargo Master Loan Facility to replace the benchmark reference rate of LIBOR to SOFR. See Note 9 "Debt" for further details.
- **2013 BofA Real Estate Facility**—On September 26, 2013, we entered into a real estate term loan credit agreement (the "2013 BofA Real Estate Credit Agreement") with Bank of America, N.A. ("Bank of America"), as lender, providing for term loans in an aggregate amount not to exceed \$75.0 million, subject to customary terms and conditions (the "2013 BofA Real Estate Facility"). As of June 30, 2022, we had \$29.8 million of outstanding borrowings under the 2013 BofA Real Estate Facility. There is no further borrowing availability under the 2013 Real Estate Facility. On May 25, 2022, certain of our subsidiaries entered into an amendment to our 2013 BofA Real Estate Facility to replace the benchmark reference rate of LIBOR to SOFR, effective June 1, 2022. See Note 9 "Debt" for further details.

#### *Covenants*

We are subject to a number of customary operating and other restrictive covenants in our various debt and lease agreements. We were in compliance with all of our covenants as of June 30, 2022.

#### *Share Repurchases and Dividend Restrictions*

Our ability to repurchase shares or pay dividends on our common stock is subject to our compliance with the covenants and restrictions in our various debt and lease agreements.

On January 30, 2014, our Board of Directors authorized our current share repurchase program (the "Repurchase Program"). On February 14, 2022, the Board of Directors increased the Company's share repurchase authorization under our Repurchase Program by \$100.0 million to \$200.0 million. The extent that the Company repurchases its shares, the number of shares and the timing of any repurchases will depend on general market conditions, legal requirements and other corporate considerations. The Repurchase Program may be modified, suspended or terminated at any time without prior notice.



During the three months ended June 30, 2022, we did not repurchase any shares of our common stock under the Repurchase Program. During the six months ended June 30, 2022, we repurchased 1,069,203 shares of our common stock under the Repurchase Program for a total of \$200.0 million. On April 27, 2022, our Board of Directors authorized an additional \$200.0 million of share repurchases under our Repurchase Program. As of June 30, 2022, we had \$200.0 million of shares remaining to repurchase under our Repurchase Program.

During the three and six months ended June 30, 2022, we repurchased 436 and 54,246 shares of our common stock for \$0.1 million and \$8.9 million, respectively from employees in connection with a net share settlement feature of employee equity-based awards.

## Cash Flows

### *Classification of Cash Flows Associated with Floor Plan Notes Payable*

Borrowings and repayments of floor plan notes payable through our 2019 Senior Credit Facility ("Non-Trade"), and all floor plan notes payable relating to used vehicles (together referred to as "Floor Plan Notes Payable—Non-Trade"), are classified as financing activities on the accompanying Condensed Consolidated Statements of Cash Flows, with borrowings reflected separately from repayments. The net change in floor plan notes payable to a lender affiliated with the manufacturer from which we purchase a particular new vehicle (collectively referred to as "Floor Plan Notes Payable—Trade") is classified as an operating activity on the accompanying Condensed Consolidated Statements of Cash Flows. Borrowings of floor plan notes payable associated with inventory acquired in connection with all acquisitions and repayments made in connection with all divestitures are classified as a financing activity in the accompanying Condensed Consolidated Statement of Cash Flows. Cash flows related to floor plan notes payable included in operating activities differ from cash flows related to floor plan notes payable included in financing activities only to the extent that the former are payable to a lender affiliated with the manufacturer from which we purchased the related inventory, while the latter are payable to our 2019 Senior Credit Facility that includes lenders affiliated with the manufacturers and lenders not affiliated with the manufacturers from which we purchased the related inventory. The majority of our floor plan notes are payable to our 2019 Senior Credit Facility, with the exception of floor plan notes payable relating to the financing of new Ford and Lincoln vehicles.

Floor plan borrowings are required by all vehicle manufacturers for the purchase of new vehicles, and all floor plan lenders require amounts borrowed for the purchase of a vehicle to be repaid within a short time period after the related vehicle is sold. As a result, we believe that it is important to understand the relationship between the cash flows of all of our floor plan notes payable and new vehicle inventory in order to understand our working capital and operating cash flow and to be able to compare our operating cash flow to that of our competitors (i.e., if our competitors have a different mix of trade and non-trade floor plan financing as compared to us). In addition, we include all floor plan borrowings and repayments in our internal operating cash flow forecasts. As a result, we use the non-GAAP measure "Adjusted cash flow provided by operating activities" (defined below) to compare our results to forecasts. We believe that splitting the cash flows of floor plan notes payable between operating activities and financing activities, while all new vehicle inventory activity is included in operating activities, results in significantly different operating cash flows than if all the cash flows of floor plan notes payable were classified together in operating activities.

Adjusted cash flow provided by operating activities includes borrowings and repayments of Floor Plan Notes Payable Non-Trade and used floor plan notes payable borrowing base changes. Adjusted cash flow provided by operating activities may not be comparable to similarly titled measures of other companies and should not be considered in isolation, or as a substitute for analysis of our operating results in accordance with GAAP. In order to compensate for these potential limitations we also review the related GAAP measures. Adjusted cash flow provided by operating activities for the six months ended June 30, 2021 differ from previously disclosed non-GAAP operating cash flow measures presented in Management's Discussion and Analysis due to the impact on operating cash flows, as reported, of the Company's recent material acquisitions. We believe that the additional adjustments related to cash flows associated with our used vehicle borrowing base, floorplan offset accounts and the impact of acquisitions and divestitures eliminates cash flow volatility and provides an adjusted operating cash flow metric that best reflects our results of operations and our management of inventory and related financing activities.

We have provided below a reconciliation of cash flow provided by operating activities, as if all changes in floor plan notes payable, except for (i) borrowings associated with acquisitions and repayments associated with divestitures and (ii) borrowings and repayments associated with the purchase of used vehicle inventory and (iii) changes in the floorplan offset accounts were classified as an operating activity for both Floorplan Notes Payable - Non-Trade and Floor Plan Notes Payable - Trade.

|   | For the Six Months Ended June 30, |                 |
|---|-----------------------------------|-----------------|
|   | 2022                              | 2021            |
|   | (In millions)                     |                 |
| <i>Reconciliation of Cash provided by operating activities to Cash provided by operating activities, as adjusted</i>  |                                   |                 |
| Cash provided by operating activities, as reported  | \$ 496.6                          | \$ 587.3        |
| Change in Floor Plan Notes Payable Non-Trade, net   | (203.0)                           | (407.9)         |
| Change in Floor Plan Notes Payable Non-Trade associated with floor plan offset, used vehicle borrowing base changes adjusted for acquisition and divestitures | 246.2                             | 72.5            |
| Change in Floor Plan Notes Payable Trade associated with floor plan offset and net acquisition and divestitures   | 4.1                               | (6.8)           |
| Adjusted cash flow provided by operating activities   | <u>\$ 543.9</u>                   | <u>\$ 245.1</u> |

#### Operating Activities—

Net cash provided by operating activities totaled \$496.6 million and \$587.3 million, for the six months ended June 30, 2022 and 2021, respectively. Adjusted cash flow provided by operating activities totaled \$543.9 million and \$245.1 million, for the six months ended June 30, 2022, and 2021, respectively. Adjusted cash flow provided by operating activities includes net income, adjustments to reconcile net income to net cash provided by operating activities, changes in working capital, changes in used vehicle borrowing base, changes in Floor Plan Notes Payable—Non-Trade and Trade, excluding the impact of offsets, and excluding operating cash flows associated with acquisitions and divestitures related to loaner vehicles and new vehicle inventories financed through Floor Plan Notes Payable—Trade.

The \$298.8 million increase in Adjusted cash flow provided by operating activities for the six months ended June 30, 2022 compared to the six months ended June 30, 2021, was primarily the result of the following:

- increase in \$216.8 million net income and non-cash adjustments to net income;
- \$96.5 million related to an increase in accounts payable and accrued liabilities;
- \$49.7 million related to a increase in inventory, net of floor plan notes payable, including both trade and non-trade, excluding offset and including used vehicle borrowing base changes adjusted for acquisitions and divestitures; and
- \$29.0 million increase in other long term assets and liabilities, net.

The increase in our Adjusted cash flow provided by operating activities, was partially offset by:

- \$21.7 million related to sales volume and the timing of collection of accounts receivable and contracts-in-transit during 2022 as compared to 2021; and
- \$68.0 million related to the change in other current assets, net.

#### Investing Activities—

Net cash used in investing activities totaled \$344.2 million for the six months ended June 30, 2022 compared to cash used in investing activities of \$228.8 million, for the six months ended June 30, 2021. Capital expenditures, excluding the purchase of real estate, were \$39.5 million and \$26.7 million for the six months ended June 30, 2022 and 2021, respectively. We expect that capital expenditures during 2022 will total approximately \$120.0 million to upgrade or replace our existing facilities, construct new facilities, expand our service capacity, and invest in technology and equipment. In addition, as part of our capital allocation strategy, we continually evaluate opportunities to purchase properties currently under lease and acquire properties in connection with future dealership relocations. No assurances can be provided that we will have or be able to access capital at times or on terms in amounts deemed necessary to execute this strategy.

During the six months ended June 30, 2022, we sold one franchise (one dealership location) in St. Louis, Missouri, three franchises (three dealership locations) and one collision center in Denver, Colorado, two franchises (two dealership locations) in Spokane, Washington and one franchise (one dealership location) in Albuquerque New Mexico for an aggregate purchase price of \$379.7 million.

We purchased \$25.9 million of debt securities and \$8.4 million of equity securities during the six months ended June 30, 2022. We also received proceeds of \$29.4 million and \$8.9 million from the sale of debt and equity securities, respectively,

during the six months ended June 30, 2022. We did not have any purchases or sales of debt and equity securities during the prior year period.

During the six months ended June 30, 2021, we released \$1.0 million of purchase price holdbacks related to a prior year acquisition.

During the six months ended June 30, 2021, we received cash proceeds of \$21.5 million from the sale of real estate properties.

During the six months ended June 30, 2021, purchases of real estate, including previously leased real estate, totaled \$222.6 million.

As part of our capital allocation strategy, we continually evaluate opportunities to purchase properties currently under lease and acquire properties in connection with future dealership relocations. No assurances can be provided that we will have or be able to access capital at times or on terms in amounts deemed necessary to execute this strategy.

#### *Financing Activities—*

Net cash used in financing activities totaled \$919.6 million and \$257.6 million for the six months ended June 30, 2022 and 2021.

During the six months ended June 30, 2022 and 2021, we had non-trade floor plan borrowings, excluding floor plan borrowings associated with acquisitions, of \$3.62 billion and \$2.40 billion, respectively, and non-trade floor plan repayments, excluding floor plan repayments associated with a divestiture, of \$4.12 billion and \$2.81 billion, respectively.

During the six months ended June 30, 2022, we had non-trade floor plan repayments associated with divestitures of \$21.6 million.

Repayments of borrowings totaled \$24.1 million and \$23.9 million for the six months ended June 30, 2022 and 2021, respectively.

Proceeds of \$330.0 million were received in connection with borrowings under our Revolving Credit Facility during the six months ended June 30, 2022 and \$499.0 million was repaid during the same period.

During the six months ended June 30, 2022, we repurchased 1,069,203 shares of our common stock under our Repurchase Program for a total of \$200.0 million and repurchased 54,246 shares of our common stock for \$8.9 million from employees in connection with a net share settlement feature of employee equity-based awards.

#### **Off Balance Sheet Arrangements**

We had no off balance sheet arrangements during any of the periods presented other than those disclosed in Note 13 "Commitments and Contingencies" within the accompanying Condensed Consolidated Financial Statements.

#### **Critical Accounting Policies and Estimates**

For a description of our critical accounting policies and estimates, see our Annual Report on Form 10-K for the fiscal year ended December 31, 2021. Our critical accounting policies and estimates have not changed materially during the six months ended June 30, 2022.

#### **Guarantor Financial Information**

As of June 30, 2022, the Company had outstanding \$405.0 million of 4.500% Senior Notes due 2028 and \$445.0 million of 4.750% Senior Notes due 2030. The Senior Notes have been fully and unconditionally guaranteed, jointly and severally, on a senior unsecured basis, by each existing and future restricted subsidiary of the Company (the "Guarantor Subsidiaries"), with the exception of Landcar Administration Company, Landcar Agency, Inc. and Landcar Casualty Company and their respective subsidiaries (collectively, the "TCA Non-Guarantor Subsidiaries"). The 2028 Notes and the 2030 Notes were required to be registered under the Securities Act of 1933 within 270 days of the closing date for the offering of each respective series. The Company completed the registration of the 2028 Notes and 2030 Notes in October 2020.

The following tables present summarized financial information for the Company and the Guarantor Subsidiaries on a combined basis after elimination of (i) intercompany transactions and balances among Asbury and the Guarantor Subsidiaries and (ii) assets, liabilities, and equity in earnings from and investments in any non-guarantor subsidiaries.

## Summarized Balance Sheet Data of Asbury and Guarantor Subsidiaries

|                                  | As of         |                   |
|----------------------------------|---------------|-------------------|
|                                  | June 30, 2022 | December 31, 2021 |
|                                  | (In millions) |                   |
| Current assets                   | \$ 1,454.5    | \$ 1,778.4        |
| Current assets - affiliates      | \$ —          | \$ —              |
| Non-current assets               | \$ 5,491.7    | \$ 5,511.3        |
| Current liabilities              | \$ 1,038.9    | \$ 1,473.2        |
| Current liabilities - affiliates | \$ 80.6       | \$ 6.9            |
| Non-current liabilities          | \$ 3,576.5    | \$ 3,916.7        |

## Summarized Statement of Operations Data for Asbury and Guarantor Subsidiaries for the six months ended :

|                        | For the Six Months Ended |         |
|------------------------|--------------------------|---------|
|                        | June 30, 2022            |         |
|                        | (In millions)            |         |
| Net sales              | \$                       | 7,824.2 |
| Gross profit           | \$                       | 1,575.1 |
| Income from operations | \$                       | 626.7   |
| Net income             | \$                       | 411.6   |

**Item 3. Quantitative and Qualitative Disclosures About Market Risk****Interest Rate Risk**

We are exposed to risk from changes in interest rates on a portion of our outstanding indebtedness. Based on \$139.2 million of total variable interest rate debt, which includes our floor plan notes payable and certain mortgage liabilities, outstanding as of June 30, 2022, a 100 basis point change in interest rates could result in a change of as much as \$1.4 million to our total annual interest expense in our Condensed Consolidated Statements of Income.

We periodically receive floor plan assistance from certain automobile manufacturers, which is accounted for as a reduction in our new vehicle inventory cost. Floor plan assistance reduced our cost of sales for the six months ended June 30, 2022 and 2021 by \$44.2 million and \$29.8 million, respectively. We cannot provide assurance as to the future amount of floor plan assistance and these amounts may be negatively impacted due to future changes in interest rates.

As part of our strategy to mitigate our exposure to fluctuations in interest rates, we have various interest rate swap agreements. All of our interest rate swaps qualify for cash flow hedge accounting treatment and do not contain any ineffectiveness.

We currently have seven interest rate swap agreements. In January 2022, we entered into two new interest rate swap agreements with a combined notional principal amount of \$550.0 million. These swaps are designed to provide a hedge against changes in variable rate cash flows regarding fluctuations in the SOFR rate. All interest rate swap agreements with an inception date of 2021 and prior were amended on June 1, 2022 to provide a hedge against changes in variable rate cash flows regarding fluctuations in SOFR as compared to the previous benchmark rate of one-month LIBOR. The revisions to the interest rate swap agreements did not impact our hedge accounting. The following table provides information on the attributes of each swap as of June 30, 2022:

| <b>Inception Date</b> | <b>Notional Principal at Inception</b> |       | <b>Notional Value</b> |       | <b>Notional Principal at Maturity</b> |       | <b>Maturity Date</b> |
|-----------------------|--|-------|-----------------------|-------|---------------------------------------|-------|----------------------|
|                       | <b>(In millions)</b>                   |       | <b>(In millions)</b>  |       | <b>(In millions)</b>                  |       |                      |
| January 2022          | \$                                     | 300.0 | \$                    | 296.3 | \$                                    | 228.8 | December 2026        |
| January 2022          | \$                                     | 250.0 | \$                    | 250.0 | \$                                    | 250.0 | December 2031        |
| May 2021              | \$                                     | 184.4 | \$                    | 177.0 | \$                                    | 110.6 | May 2031             |
| July 2020             | \$                                     | 93.5  | \$                    | 84.0  | \$                                    | 50.6  | December 2028        |
| July 2020             | \$                                     | 85.5  | \$                    | 76.1  | \$                                    | 57.3  | November 2025        |
| June 2015             | \$                                     | 100.0 | \$                    | 66.7  | \$                                    | 53.1  | February 2025        |
| November 2013         | \$                                     | 75.0  | \$                    | 43.3  | \$                                    | 38.7  | September 2023       |

For additional information about the effect of our derivative instruments, see Note 10 "Financial Instruments and Fair Value" within the accompanying Condensed Consolidated Financial Statements.

**Item 4. Controls and Procedures****Disclosure Controls and Procedures**

As of the end of the period covered by this report, we conducted an evaluation, under the supervision and with the participation of our principal executive officer and principal financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures as defined in Rule 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934 (the "Exchange Act"). Based on this evaluation, our principal executive officer and principal financial officer concluded that as of the end of such period such disclosure controls and procedures were effective to ensure that information required to be disclosed by us in reports we file or submit under the Exchange Act is (i) recorded, processed, summarized, and reported within the time period specified in the rules and forms of the U.S. Securities and Exchange Commission, and (ii) accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding disclosure. Management necessarily applies its judgment in assessing the costs and benefits of such controls and procedures, which, by their nature, can provide only reasonable assurance regarding management's control objectives. Management, including the principal executive officer and the principal financial officer, does not expect that our disclosure controls and procedures can prevent all possible errors or fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that objectives of the control system are met. There are inherent limitations in all control systems, including the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple errors or mistakes. Additionally, controls can be circumvented by the intentional acts of one or

more persons. The design of any system of controls is based in part upon certain assumptions about the likelihood of future events, and while our disclosure controls and procedures are designed to be effective under circumstances where they should reasonably be expected to operate effectively, there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Because of the inherent limitations in any control system, misstatements due to possible errors or fraud may occur and not be detected.

During 2021, we acquired substantially all of the assets, including certain real estate, of 94 franchises (65 new dealership locations), seven used vehicle stores, eleven collision centers, a used vehicle wholesale business and an F&I product provider business. As permitted by the Securities and Exchange Commission, the scope of our Section 404 evaluation for the period covered by this report, does not include an evaluation of the internal control over financial reporting of these acquired operations.

### **Changes in Internal Control Over Financial Reporting**

There were no changes in our internal control over financial reporting during the quarter ended June 30, 2022 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

## **PART II. OTHER INFORMATION**

### **Item 1. Legal Proceedings**

From time to time, we and our dealerships may become involved in various claims relating to, and arising out of our business and our operations. These claims may involve, but are not limited to, financial and other audits by vehicle manufacturers or lenders, and certain federal, state, and local government authorities, which relate primarily to (i) incentive and warranty payments received from vehicle manufacturers, or allegations of violations of manufacturer agreements or policies, (ii) compliance with lender rules and covenants and (iii) payments made to government authorities relating to federal, state, and local taxes, as well as compliance with other government regulations. Claims may also arise through litigation, government proceedings, and other dispute resolution processes. Such claims, including class actions, can relate to, but are not limited to, the practice of charging administrative fees, employment-related matters, truth-in-lending practices, contractual disputes, actions brought by governmental authorities, and other matters. We evaluate pending and threatened claims and establish loss contingency reserves based upon outcomes we currently believe to be probable and reasonably estimable.

We currently do not anticipate that any known claim will materially adversely affect our financial condition, liquidity or results of operations. However, the outcome of any matter cannot be predicted with certainty, and an unfavorable resolution of one or more matters presently known or arising in the future could have a material adverse effect on our financial condition, liquidity or results of operations.

### **Item 1A. Risk Factors**

In addition to the other information set forth in this Quarterly Report on Form 10-Q, you should carefully consider the risk factors that affect our business and financial results that are discussed in Part I, Item 1A, of our Annual Report on Form 10-K for the fiscal year ended December 31, 2021. These factors could materially adversely affect our business, financial condition, liquidity, results of operations and capital position, and could cause our actual results to differ materially from our historical results or the results contemplated by the forward-looking statements contained in this report. There have been no material changes to such risk factors.

### **Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

On January 30, 2014, our Board of Directors authorized our current Repurchase Program. On February 14, 2022, the Board of Directors increased the Company's share repurchase authorization under our Repurchase Program by \$100.0 million to \$200.0 million. The extent to which the Company repurchases its shares, the number of shares and the timing of any repurchases will depend on general market conditions, legal requirements and other corporate considerations. The Repurchase Program may be modified, suspended or terminated at any time without prior notice.

During the three months ended June 30, 2022, we did not repurchase any shares of our common stock under the Repurchase Program. As of June 30, 2022 we had \$200.0 million remaining authorization to repurchase shares of our common stock under the Repurchase Program.

In addition, during the three months ended June 30, 2022, we repurchased 436 shares of our common stock for \$0.1 million from employees in connection with a net share settlement feature of employee equity-based awards.

**Item 5. Other Information**

*The information set forth below is included herein for the purpose of providing the disclosure required under “Item 5.02 - Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers” of Form 8-K.*

On July 28, 2022, the Company entered into a severance agreement with Dan Clara, Senior Vice President, Operations of the Company (the “Severance Agreement”), which is identical to the form of severance agreement entered into with the other senior vice presidents of the Company. The Severance Agreement provides for one year of base salary, one year of benefits continuation, and a pro-rated bonus (which includes any payment under a non-equity incentive compensation plan) in the amount that the affected executive would have received had he not been terminated during such year (collectively, the “Severance Payment”) if (i) the affected executive is terminated by the Company without “cause,” if the affected executive terminates his employment for any of the following reasons: (a) mandatory relocation of the affected executive's current principal place of business to a location more than 50 miles away; (b) any material diminution in the affected executive's base salary; and (c) any material diminution in the affected executive's authority, duties or responsibilities.

The Severance Agreement requires the affected executive to execute a general release in favor of the Company as a condition to receiving any Severance Payments. The Severance Agreements also contain certain confidentiality, non-compete and non-solicit obligations and provides that, if such obligations are breached by the affected executive, the Company has the right to stop making any otherwise required Severance Payments. Additionally, the Severance Agreements provide that the affected executive will not receive any Severance Payment in the event of termination due to death, disability, retirement, voluntary resignation or termination by the Company for cause.

The foregoing summary of the Severance Agreement does not purport to be complete and is qualified in its entirety by reference to the Severance Agreement, a copy of which will is filed as exhibit 10.7 hereto and is incorporated herein by reference.

**Item 6. Exhibits**

| <b>Exhibit Number</b> | <b>Description of Documents</b>  |
|-----------------------|--|
| <a href="#">10.1</a>  | Third Amendment to the Credit Agreement, dated as of May 25, 2022, among Asbury Automotive Group, Inc., as borrower, certain of subsidiaries of Asbury Automotive Group, Inc. and Bank of America, N.A.  |
| <a href="#">10.2</a>  | Fourth Amendment to the Third Amended and Restated Credit Agreement, dated as of May 25, 2022, among Asbury Automotive Group, Inc., as a borrower, certain of its subsidiaries, as vehicle borrowers, the guarantors party thereto, Bank of America, N.A., as administrative agent, revolving swing line lender, new vehicle floorplan swing line lender, used vehicle floorplan swingline lender and an L/C issuer, and the other lenders party thereto |
| <a href="#">10.3</a>  | Second Amendment to the Amended and Restated Master Loan Agreement, dated as of June 1, 2022, by and among certain subsidiaries of Asbury Automotive Group, Inc. and Wells Fargo Bank, National Association  |
| <a href="#">10.4</a>  | Third Amendment to the Credit Agreement, dated as of May 25, 2022, among Asbury Automotive Group, Inc., as borrower, certain subsidiaries of Asbury Automotive Group, Inc. and Bank of America, N.A.   |
| <a href="#">10.5</a>  | Second Amendment to the Master Loan Agreement, dated as of June 1, 2022, by and among certain subsidiaries of Asbury Automotive Group, Inc. and Wells Fargo Bank, National Association   |
| <a href="#">10.6</a>  | Second Amendment to the Credit Agreement, dated as of May 25, 2022, by and among Asbury Automotive Group, Inc., certain subsidiaries party thereto as borrowers, the guarantors party thereto, the lenders party thereto, and Bank of America, N.A., as administrative agent   |
| <a href="#">10.7</a>  | Severance Pay Agreement for Key Employee between Asbury Automotive Group, Inc. and Daniel Clara dated as of July 28, 2022.   |
| <a href="#">31.1</a>  | Certificate of Chief Executive Officer pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002   |
| <a href="#">31.2</a>  | Certificate of Chief Financial Officer pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002   |
| <a href="#">32.1</a>  | Certificate of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002  |
| <a href="#">32.2</a>  | Certificate of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002  |
| 101.INS               | XBRL Instance Document - The instance document does not appear in the interactive data file because its XBRL tags are embedded within the inline XBRL document   |
| 101.SCH               | XBRL Taxonomy Extension Schema Document  |
| 101.CAL               | XBRL Taxonomy Extension Calculation Linkbase Document  |
| 101.DEF               | XBRL Taxonomy Extension Definition Linkbase Document   |
| 101.LAB               | XBRL Taxonomy Extension Label Linkbase Document  |
| 101.PRE               | XBRL Taxonomy Extension Presentation Linkbase Document   |
| 104                   | Cover Page Interactive Data File (formatted in iXBRL Exhibit 101)  |





### THIRD AMENDMENT TO CREDIT AGREEMENT

This **THIRD AMENDMENT TO CREDIT AGREEMENT** (this “Amendment”), dated as of May 25, 2022 (the “Third Amendment Effective Date”) is by and among **ASBURY AUTOMOTIVE GROUP, INC.**, a Delaware corporation (“Company”), certain Subsidiaries of the Company party to the Credit Agreement (as defined below), as borrowers (each such Subsidiary, a “Borrower” and collectively, the “Borrowers”), certain Subsidiaries of the Company, as guarantors (each such Subsidiary, a “Subsidiary Guarantor” and collectively, the “Subsidiary Guarantors” and, together with the Company, each, a “Guarantor” and, collectively, the “Guarantors”), and **BANK OF AMERICA, N.A.**, as lender (the “Lender”) under that certain Credit and Security Agreement dated as of November 13, 2018 (as amended, restated, supplemented or otherwise modified prior to the date hereof, the “Existing Credit Agreement”). Capitalized terms used but not defined in this Amendment shall have the meanings that are set forth in the Amended Credit Agreement (as defined herein).

#### W I T N E S S E T H:

**WHEREAS**, Company, Borrowers and the Lender desire to amend certain provisions of the Credit Agreement on the terms and conditions contained herein; and

**WHEREAS**, the Lender is willing to agree to such amendments on the terms, subject to the conditions and to the extent set forth herein

**NOW, THEREFORE**, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

#### SECTION 1 CONSENT AND AMENDMENTS

**1.1 Amendments to Credit Agreement.** Simultaneously with the Third Amendment Effective Date (as defined herein), the parties hereby agree that:

(a) the Existing Credit Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text), each as set forth in the pages of a conformed copy of the Existing Credit Agreement, as amended hereby, attached as Annex A hereto (as so amended, the “Amended Credit Agreement” and the Amended Credit Agreement as otherwise amended, restated, supplemented or otherwise modified from time to time on or after the date hereof, the “Credit Agreement”); and

(b) This Amendment is not a novation of the Existing Credit Agreement or of any credit facility or guaranty provided thereunder or in respect thereof. Notwithstanding that the cover page of the Amended Credit Agreement is dated “as of November 13, 2018” and Section 4.01 of the Amended Credit Agreement attached hereto contains those conditions which were applicable to the initial Closing Date of November 13, 2018, the changes to the Existing Credit Agreement effected by this Amendment shall be effective as of the satisfaction to the conditions to effectiveness set forth in Section 2.1 of this Amendment. The signature pages contained may be left off of the Amended Credit Agreement.

#### SECTION 2. CONDITIONS PRECEDENT TO EFFECTIVENESS

**2.1** The effectiveness of this Amendment is conditioned upon the Bank’s receipt of the following items, in form and content acceptable to the Bank:

- (a) executed counterparts of this Amendment from each Borrower, each Guarantor and Lender.

### SECTION 3. MISCELLANEOUS

**3.1 Binding Effect.** This Amendment shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of Lender.

**3.2 Severability.** In case any provision in or obligation hereunder shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

**3.3 Effect on Credit Agreement.** Except as specifically amended and modified by this Amendment, the Credit Agreement shall remain in full force and effect and is hereby ratified and confirmed. The parties agree that in the event of any conflict between this Amendment and the provisions of the Credit Agreement, this Amendment shall control.

**3.4 No Waiver.** The execution, delivery and performance of this Amendment shall not, except as expressly provided herein, constitute a waiver of any provision of, or operate as a waiver of any right, power or remedy of the Lender under the Credit Agreement. This Amendment is limited to the matters expressly referred to herein and shall not constitute an amendment or waiver of, or an indication of the Lender's willingness to amend or waive, any other provisions of the Credit Agreement or the same provisions for any other date or purpose.

**3.5 Headings.** Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

**3.6 GOVERNING LAW.** THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

**3.7 Counterparts.** This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are attached to the same document. Delivery of an executed signature page of this Amendment by facsimile transmission or electronic mail shall be as effective as delivery of a manually executed counterpart hereof.

*(Signature Pages Follow)*





**Annex A**

**Amended Credit Agreement**

See attached.

**CREDIT AGREEMENT**

Dated as of November 13, 2018

among

**ASBURY AUTOMOTIVE GROUP, INC.,**  
as the Company,

**CERTAIN OF ITS SUBSIDIARIES,**  
as Borrowers,

and

**BANK OF AMERICA, N.A.,**  
as Lender

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## CREDIT AGREEMENT

This CREDIT AGREEMENT ("Agreement") is entered into as of November 13, 2018, among ASBURY AUTOMOTIVE GROUP, INC., a Delaware corporation (the "Company"), certain Subsidiaries of the Company party hereto as borrowers pursuant to Section 2.10 (each such Subsidiary, a "Borrower" and collectively, the "Borrowers") and BANK OF AMERICA, N.A., as lender (the "Lender").

WHEREAS, the Company and the Borrowers have requested that the Lender make loans and other financial accommodations to the Borrowers in an aggregate amount of up to \$128,120,500.00.

WHEREAS, the Lender has agreed to make such loans and other financial accommodations to the Loan Parties on the terms and subject to the conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

### ARTICLE I. DEFINITIONS AND ACCOUNTING TERMS

#### 1.01 Defined Terms

. As used in this Agreement, the following terms shall have the meanings set forth below:

"Added Property" has the meaning specified in the definition of "Collateral Substitution".

"Adjusted FIRREA Appraisal Value" means, with respect to a Financed Property, the value set forth for such Financed Property in the most recent FIRREA Appraisal, as accepted by the Lender following its internal review and, if applicable, adjustment thereof by the Lender, based on criteria and factors then generally used and considered by Lender in determining the value of similar real estate properties and any applicable rules or regulations adopted by any Governmental Authority. The Adjusted FIRREA Appraised Value of each Financed Property (other than an Added Property) is set forth on Schedule 2.01.

"Affiliate" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agreement" has the meaning specified in the introductory paragraph hereto.

"Applicable Rate" means a per annum rate equal to:

- (a) with respect to Eurodollar Rate Daily Simple SOFR Loans, 1.50%; and
- (b) with respect to Base Rate Loans, 0.50%.

"Attributable Indebtedness" means, on any date, (a) in respect of any capital lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a capital lease.

“Audited Financial Statements” means the audited consolidated balance sheet of the Company and its Subsidiaries for the fiscal year ended December 31, 2017, and the related consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of the Company and its Subsidiaries, including the notes thereto.

“Austin Financed Property” means the Financed Property located at 13573 Research Boulevard, Austin, Texas.

“Automatic Debit Date” means the first Business Day of a calendar month.

“Availability Period” means the period from and including the Closing Date to the earliest of (i) the date that is one year after the Closing, (ii) the date of termination of the Commitment pursuant to Section 2.03, and (iii) the date of termination of the commitment of Lender to make Loans pursuant to Section 8.02,

“Bank of America” means Bank of America, N.A. and its successors.

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate,” ~~and~~ (c) ~~the Eurodollar Rate~~ Daily Simple SOFR plus 1.00%, and (d) 1.00%. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change. If the Base Rate is being used as an alternate rate of interest pursuant to Section 3.03 hereof, then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above.

“Base Rate Loan” means a Loan that bears interest based on the Base Rate.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. §1010.230.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“Borrower” and “Borrowers” each has the meaning specified in the introductory paragraph hereto.

“Borrowings” means a borrowing consisting of simultaneous Loans of the same Type made by the Lender pursuant to Section 2.01.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state

where the Lender's Office is located ~~and, if such day relates to any Eurodollar Rate Loan, means any such day that is also a London Banking Day.~~

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Closing Date" means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 9.01.

"Code" means the Internal Revenue Code of 1986.

"Collateral" means, collectively, the interests in real property, fixtures, related real property interests, related contracts and proceeds of the foregoing in which a Lien is granted or purported to be granted pursuant to the Mortgages.

"Collateral Substitution" means the removal of all or a portion of a Financed Property (such Financed Property or portion thereof, a "Removed Property") from the Property Pool (and the release of any Liens of the Lender on such Removed Property and any Collateral related to such Removed Property, as applicable) substantially simultaneously with, and in any event on the same day as, the addition of a different Financed Property (the "Added Property") to the Property Pool; provided that, (i) there shall exist no Default or Event of Default at the time of any such Collateral Substitution, (ii) any such Collateral Substitution shall be subject to satisfaction of those requirements set forth in Section 4.02 and such Added Property (and any Collateral related to such property) shall be subject to a Mortgage and Real Estate Support Documents, (iii) in the event any Subsidiary which owns or leases the real property proposed to be Added Property in connection with such Collateral Substitution is not an existing Borrower or Subsidiary Guarantor, as the case may be, such Subsidiary shall have complied with the provisions of Section 6.05 prior to or substantially simultaneously with the addition of such proposed Added Property to the Property Pool, (iv) the Company shall have paid all fees related to any such Collateral Substitution, and (v) in the event of a Collateral Substitution for a portion of a Financed Property, such substitution shall be effected in connection with a Permitted Financed Property Disposition. Upon the effectiveness of a Collateral Substitution, the respective Removed Property shall immediately cease to be a Financed Property.

"Collateral Substitution Test" shall mean:

(i) with respect to a Collateral Substitution of an entire Financed Property, that the Lender shall have received a FIRREA Appraisal of the Added Property dated no more than six (6) months before such Collateral Substitution which evidences an Adjusted FIRREA Appraisal Value of the Added Property equal to at least the Initial FIRREA Appraisal Value of the Initial Financed Property associated with the Related Loan applicable to such Removed Property; and

(ii) with respect to a Collateral Substitution of a portion of a Financed Property (such Financed Property (including the respective Removed Property and the respective Remaining Property) being referred to as, the “Subject Financed Property”), that:

(x) the Lender shall have received FIRREA Appraisals dated no more than six (6) months before such Collateral Substitution of (1) the portion of the Financed Property that will remain as Collateral after Collateral Substitution (the “Remaining Property”) and (2) any Added Property proposed to be added to the Property Pool in connection with such Collateral Substitution; and

(y) (1) the Adjusted FIRREA Appraisal Value of the Remaining Property, plus the Adjusted FIRREA Appraisal Value of any such Added Property shall be equal to at least the Initial FIRREA Appraisal Value of the Initial Financed Property associated with the Related Loan applicable to such Subject Financed Property or (2) in the event the proportionate amount of the Initial Adjusted FIRREA Appraisal Value associated with such Removed Property is readily identifiable by the applicable initial FIRREA Appraisal for such Subject Financed Property (as determined by Lender), the Adjusted FIRREA Appraisal Value of any such Added Property shall be equal to at least such readily identifiable proportionate amount of such Initial FIRREA Appraisal Value (and in which case of this clause (2), the FIRREA Appraisal referenced in clause (x)(1) above shall not be required to be delivered to Lender).

“Commitment” means the Lender’s obligation to make Loans to the Borrowers pursuant to Section 2.01 in an aggregate principal amount not to exceed \$97,164,250.00.

“Company” has the meaning specified in the introductory paragraph hereto.

“Conforming Changes” means, with respect to the use, administration of or any conventions associated with SOFR or any proposed Successor Rate or Daily Simple SOFR, as applicable, any conforming changes to the definitions of “Base Rate”, “SOFR”, and “Daily Simple SOFR”, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definition of “Business Day”, timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of the Lender, to reflect the adoption and implementation of such applicable rate(s) and to permit the administration thereof by the Lender in a manner substantially consistent with market practice (or, if the Lender determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate exists, in such other manner of administration as the Lender determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.



“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Covered Entity” has the meaning specified in Section 9.20.

“Daily Simple SOFR” means:

(a) with respect to a Daily Simple SOFR Loan, the rate per annum equal to the Daily Simple SOFR Published Rate two Business Days prior to the date of determination; provided that if the rate is not published on such date of determination then Daily Simple SOFR means the Daily Simple SOFR Published Rate on the first Business Day immediately prior thereto, in each case, plus the SOFR Adjustment; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to Daily Simple SOFR Published Rate on such date;

(c) provided that if Daily Simple SOFR determined in accordance with either of the foregoing provisions (a) or (b) of this definition would otherwise be less than zero, Daily Simple SOFR shall be deemed zero for purposes of this Agreement.

“Daily Simple SOFR Loan” means a Loan that bears interest at a rate based on Daily Simple SOFR.

“Daily Simple SOFR Published Rate” with respect to any applicable determination date means the SOFR published on such date on the Federal Reserve Bank of New York’s website (or any successor source).

“Daily Simple SOFR Replacement Date” has the meaning specified in Section 3.03(b).

“Debtor Relief Laws” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means an interest rate equal to (a) the Base Rate plus (b) the Applicable Rate, if any, applicable to Base Rate Loans plus (c) 2% per annum; provided, however, that with respect to a ~~Eurodollar Rate~~ Daily Simple SOFR Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum.

“Delaware LLC” means any limited liability company organized or formed under the laws of the State of Delaware.

“Delaware Divided LLC” means any Delaware LLC which has been formed upon consummation of a Delaware LLC Division.

“Delaware LLC Division” means the statutory division of any Delaware LLC into two or more Delaware LLCs pursuant to Section 18-217 of the Delaware Limited Liability Company Act.

“Designated Jurisdiction” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith and including any disposition of property to a Delaware Divided LLC or pursuant to a Delaware LLC Division.

“Dollar” and “\$” mean lawful money of the United States.

“Domestic Subsidiary” means any Subsidiary that is organized under the laws of any political subdivision of the United States.

“Environmental Issue” means, with respect to a Financed Property, any potential or existing Environmental Liability relating to such Financed Property that is identified in any environmental reports obtained by any Borrower as requiring further remediation or investigation, including, without limitation, any potential Environmental Liability of which any Borrower or any Borrower’s environmental consultant becomes aware.

“Environmental Laws” means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Company, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with the Company within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Company or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Company or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Company or any ERISA Affiliate.

~~“Eurodollar Rate” means:~~

~~(a) With respect to a Eurodollar Rate Loan, the rate per annum equal to (i) the London Interbank Offered Rate (“LIBOR”) or a comparable or successor rate which rate is approved by the Lender, as published on the Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Lender from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period;~~

~~(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to LIBOR, at approximately 11:00 a.m., London time determined two Business Days prior to such date for U.S. Dollar deposits with a term of one month commencing that day; and~~

~~(c) if the Eurodollar Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement;~~

~~provided that to the extent a comparable or successor rate is approved by the Lender in connection herewith, the approved rate shall be applied to the applicable Interest Period in a manner consistent with market practice; provided, further that to the extent such market practice is not administratively feasible for the Lender, such approved rate shall be applied to the applicable Interest Period as otherwise reasonably determined by the Lender.~~

~~A Loan bearing interest at the Eurodollar Rate may be (a) borrowed on any day (whether or not it is the first day of the applicable Interest Period) and (b) repaid or converted to a different~~

~~Type of Loan on any day (whether or not it is the last day of an Interest Period) without giving rise to any additional payment for “break funding” losses.~~

~~“Eurodollar Rate Loan” means a Loan that bears interest at a rate based on clause (a) of the definition of “Eurodollar Rate.”~~

“Event of Default” has the meaning specified in Section 8.01.

“Excluded Swap Obligation” means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Loan Party of, the joint and several liability of such Loan Party for, or the grant by such Loan Party of a security interest to secure, such Swap Obligation (or any Guarantee thereof or joint and several liability therefor) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to Section 9.18 and any other “keepwell, support or other agreement” for the benefit of such Loan Party and any and all guarantees of such Loan Party’s Swap Obligations by other Loan Parties) at the time the Guarantee of such Loan Party, the joint and several liability of such Loan Party or a grant by such Loan Party of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes excluded in accordance with the first sentence of this definition. The parties hereto agree that if any Loan Party has granted a Lien on any Collateral of such Loan Party pursuant to any Security Instrument, the obligations secured by such Lien shall exclude any Excluded Swap Obligation with respect to such Loan Party, and such Security Instrument is hereby deemed amended to effect such exclusion.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of the Lender, its Lender’s Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of the Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of the Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which the Lender changes its Lender’s Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii), (a)(iii) or (c), amounts with respect to such Taxes were payable to the Lender immediately before it changed its Lender’s Office, and (c) any U.S. federal withholding Taxes imposed pursuant to FATCA.

“Facility Termination Date” means the date as of which all of the following shall have occurred: (a) the Commitment has terminated, and (b) all Obligations have been indefeasibly paid in full in cash (other than (x) contingent indemnification obligations as to which no claim has been made and (y) obligations and liabilities under Secured Hedge Agreements as to which arrangements satisfactory to the applicable Hedge Bank have been made).

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471 (b) (1) of the Code.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System ~~arranged by Federal funds brokers on such day~~, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, ~~and~~ (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Lender, and (c) if the Federal Funds Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Financed Property” means a real property parcel (and improvements related thereto) which (a) is owned in fee by a Borrower and located at or near a dealership or otherwise used or to be used by a dealership in its business, (b) is located in any state of the United States of America or the District of Columbia, (c) has been identified as a Financed Property with respect to any Loans on the applicable Loan Notice and (d) is one of the properties identified on Schedule 2.01 or an Added Property that has been added pursuant to a Collateral Substitution in accordance with the terms hereof. The Lender may revise Schedule 2.01 from time to time to (i) add any Added Property that has been added to the Property Pool, (ii) delete any Removed Property that has been removed from the Property Pool or (iii) delete any property that has been sold, transferred or otherwise disposed of in a Permitted Financed Property Disposition.

“FIRREA Appraisal” means an appraisal of a Financed Property that is commissioned by the Lender and satisfies the requirement of the Federal Institutions Reform, Recovery and Enforcement Act or is otherwise acceptable to the Lender in its sole discretion.

“Flood Hazard Property” means any real property with respect to which the Lender requests a flood hazard determination in its sole discretion and which is determined to be in an area designated by the Federal Emergency Management Agency as having special flood or mudslide hazards.

“Flood Requirements” means the following, with respect to any Flood Hazard Property, in each case in form and substance satisfactory to the Lender: (a) the applicable Loan Party’s written acknowledgment of receipt of written notification from the Lender (i) as to the fact that such real property is a Flood Hazard Property, (ii) as to whether the community in which each such Flood Hazard Property is located is participating in the National Flood Insurance Program and (iii) such other flood hazard determination forms, notices and confirmations thereof as requested by the Lender and naming the Lender as lender’s loss payee; (b) copies of insurance policies or certificates of insurance of the applicable Loan Parties and naming the Lender as lender’s loss payee; and (c) property level information sufficient for the Lender to determine the adequacy of flood insurance.

“Foreign Lender” means, in the event of an assignment pursuant to Section 9.06 any Lender that is organized under the Laws of a jurisdiction other than that in which the Company is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“Framework Agreement” means a framework agreement, in each case between the Company or any Subsidiary and a manufacturer or distributor of Vehicles.

“Franchise Agreement” means any dealer franchise agreement, dealer sales and service agreement or similar agreement.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness (the “primary obligations”) payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such primary obligations, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such primary obligations of the payment or performance of such primary obligations, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such primary obligations, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such primary obligations of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any primary obligations of any primary obligor, whether or not such primary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such primary obligation to obtain any such Lien). The amount of any Guarantee (other than a Guarantee of the type described in clause (b) above) shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as reasonably determined by the guaranteeing Person in good faith. The amount of any Guarantee of the type described in clause (b) above shall be deemed to be an amount equal to the lesser of (x) the fair market value of the property subject to such Lien and (y) the stated or determinable amount of

the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning. The term “Guarantee” shall not include endorsements of instruments for deposit or collection in the ordinary course of business.

“Guaranty” means the Guaranty Agreement made by the Guarantors in favor of the Lender, substantially in the form of Exhibit C as supplemented from time to time by execution and delivery of Joinder Agreements pursuant to Section 6.05 and as otherwise supplemented, amended, or modified from time to time.

“Guarantors” means, collectively, (a) the Company, (b) the Subsidiary Guarantors, and (c) with respect to (i) Obligations owing by any Loan Party or any Subsidiary of a Loan Party under any Swap Contract and (ii) the payment and performance by each Specified Loan Party of its obligations under its Guarantee with respect to all Swap Obligations, each Borrower.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“Hedge Bank” means any Person that, (a) at the time it enters into a Swap Contract not prohibited under Article VI or VII, is the Lender or an Affiliate of the Lender, or (b) at the time it (or its Affiliate) becomes the Lender, is a party to a Swap Contract not prohibited under Article VI or VII, in each case, in its capacity as a party to such Swap Contract.

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and, in each case, not past due for more than 60 days after the original specified due date thereof, or if such trade account payable has no specified due date, the date on which such trade account payable was created);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) capital leases and Synthetic Lease Obligations;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any capital lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date. The amount of Indebtedness of the type described in clause (e) above to the extent the recourse for such Indebtedness is limited to recourse against the property subject to the Lien described in clause (e) shall be deemed to be an amount equal to the lesser of (x) the fair market value of the property subject to such Lien and (y) the outstanding amount if indebtedness secured by such Lien. The term "Indebtedness" shall not include (x) customer deposits and interest payable thereon in the ordinary course of business or (y) indebtedness to the extent that it has been defeased or satisfied and discharged in accordance with the terms of the documents governing such indebtedness; provided that (i) to the extent the deposit of assets with the applicable holders (or trustee on behalf of such holders) is required in connection with the defeasance or satisfaction and discharge of such indebtedness, such assets are limited to cash and cash equivalents and (ii) none of the assets associated with such defeasance, or any income earned on such assets, shall be included in the calculation of any financial covenant or ratio or incurrence test hereunder, any borrowing base hereunder or the Prepayment Test Amount.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

"Indemnitees" has the meaning specified in Section 9.04(b).

"Indenture~~Indentures~~" means, collectively, (i) that certain Indenture, dated as of ~~December 4~~February 19, 20142020 (as amended, supplemented and otherwise modified prior to the date hereof, and as further amended, supplemented or otherwise modified from time to time to the extent permitted hereunder), governing the ~~\$600,000,000 aggregate principal amount of outstanding 6.04.75% Senior Subordinated~~ Notes due ~~2024~~2030 of the Company, (ii) that certain Indenture, dated as of February 19, 2020 (as amended, supplemented and otherwise modified prior to the date hereof, and as further amended, supplemented or otherwise modified from time to time to the extent permitted hereunder), governing the 4.50% Senior Notes due 2028 of the Company, (iii) that certain Indenture, dated as of November 19, 2021 (as amended, supplemented and otherwise modified prior to the date hereof, and as further amended, supplemented or otherwise modified from time to time to the extent permitted hereunder), governing the 4.625% Senior Notes due 2029 of the Company, and (iv) that certain Indenture, dated as of November 19, 2021 (as amended, supplemented and otherwise modified prior to the



date hereof, and as further amended, supplemented or otherwise modified from time to time to the extent permitted hereunder), governing the 5.00% Senior Notes due 2032 of the Company.

“Information” has the meaning specified in Section 9.07.

“Initial Financed Property” means, with respect to any Related Loan, each Financed Property as it existed at the time it was financed by such Loan on the Closing Date (or, in the case of the Specified Financed Properties, as they existed on the Second Amendment Effective Date) or during the Availability Period, as applicable.

“Initial FIRREA Appraisal Value” means, with respect to any Initial Financed Property, the Adjusted FIRREA Appraisal Value applicable to such Initial Financed Property at the time the initial Related Loan was made for such Initial Financed Property (or, in the case of the Specified Financed Properties, on the Second Amendment Effective Date).

“Interest Payment Date” means the Automatic Debit Date of each calendar month.

~~“Interest Period” means a period of approximately one month commencing on the first Business Day of each month and ending on the first Business Day of the following month.~~

“IRS” means the United States Internal Revenue Service.

“Joinder Agreement” means each Joinder Agreement, substantially in the form of Exhibit D, executed and delivered by a Subsidiary or any other Person to the Lender, pursuant to Section 6.05.

“Laws” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“Lease” means each operating lease or capital lease of all or any portion of a Financed Property, including but not limited to those leases set forth on Schedule 5.26.

“Lender” has the meaning specified in the introductory paragraph hereto.

“Lender’s Office” means, the Lender’s address and, as appropriate, account as set forth on Schedule 9.02, or such other address or account as the Lender may from time to time notify to the Company.

~~“LIBOR” has the meaning specified in the definition of “Eurodollar Rate”.~~

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“Loan” has the meaning specified in Section 2.01(a).

“Loan Documents” means this Agreement, the Master Note, each Mortgage, each other Security Instrument, any Joinder Agreement and the Guaranty.

“Loan Notice” means a notice of (a) a Borrowing relating to one or more Financed Properties, or (b) a conversion of Loans from one Type to the other, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A.

“Loan Parties” means, collectively, the Company, each Borrower, each Guarantor, and each Person (other than the Lender or any landlord executing a landlord waiver) executing a Security Instrument.

~~“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.~~

“Marietta/2086 Cobb Financed Property” means the Financed Property located at 2086 Cobb Parkway SE, Marietta, Georgia.

“Marietta/2086 Cobb Cell Tower Lessee” means the current lessee of a portion of the Marietta/2086 Cobb Financed Property for use as the site of a cell tower.

“Marietta/2086 Cobb Restaurant Lessee” means the current lessee of a portion of the Marietta/2086 Cobb Financed Property for use as a restaurant.

“Master Note” means a master promissory note made by the Borrowers in favor of the Lender, evidencing Loans made by the Lender, substantially in the form of Exhibit B.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent), or financial condition of the Company and its Subsidiaries taken as a whole; (b) a material impairment of the rights and remedies of the Lender under any Loan Document, or of ability of the Loan Parties taken as a whole to perform their respective obligations under the respective Loan Documents to which any of them is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against the Loan Parties taken as a whole of the Loan Documents.

“Maturity Date” means the earlier of (i) November 13, 2025, (ii) the maturity date of the Syndicated Credit Agreement (as amended from time to time, including amendments which extend the maturity date thereunder) if such maturity date is earlier than July 25, 2021, (iii) April 25, 2021, if the Syndicated Credit Agreement is not refinanced, replaced or restated prior to April 25, 2021 or the maturity date of the Syndicated Credit Agreement has not been extended beyond July 25, 2021 and (iv) if the Syndicated Credit Agreement is refinanced, replaced or restated with a credit facility having a maturity date prior to November 13, 2025, or if the maturity date of the Syndicated Credit Agreement has been extended beyond July 25, 2021 but before November 13, 2025, such prior maturity date; provided, however, that, in each case, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

“Memorandum of Lease” means each memorandum of lease of all or any portion of a Financed Property.

“Mortgage Permitted Liens” means, with respect to any Financed Property, the “Permitted Liens” as defined in the Mortgage for such Financed Property.

“Mortgaged Property” means, with respect to any Financed Property, the “Mortgaged Property” as defined in the Mortgage related to such Financed Property.

“Mortgages” means, collectively, the mortgages, deeds of trust or security deeds now or hereafter encumbering any portion of any Borrower’s interests in the Financed Properties and other property as described therein in favor of, or for the benefit of, the Lender.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Company or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Multiple Employer Plan” means a Plan which has two or more contributing sponsors (including the Company or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“New Vehicle” means a Vehicle which has never been owned except by a manufacturer, distributor or dealer and has never been registered.

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Secured Hedge Agreement, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding; provided, that Obligations of a Loan Party shall exclude any Excluded Swap Obligation with respect to such Loan Party.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or

perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.05).

“Outstanding Amount” means, on any date, the aggregate outstanding principal amount of all Loans after giving effect to any borrowings and prepayments or repayments of Loans occurring on such date.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Act” means the Pension Protection Act of 2006.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, after the effective date of the Pension Act, Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“Pension Plan” means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by the Company and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“Permitted Financed Property Disposition” means a sale of a Financed Property in whole or in part by a Borrower, provided that (i) such Financed Property is sold at a time when no Default or Event of Default exists, (ii) such sale shall be on fair and reasonable terms substantially as favorable to such Borrower as would be obtainable by such Borrower at the time in an arm’s-length commercial transaction, (iii) substantially simultaneously with such sale, such Borrower shall either (x) repay to the Lender in full the entire outstanding principal balance of the Loan associated with such Financed Property and all accrued and unpaid interest and any fees associated therewith or (y) effectuate a Collateral Substitution pursuant to the terms and conditions of this Agreement, and (iv) in the event of any such Collateral Substitution, the Collateral Substitution Test shall have been met.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Company or any ERISA Affiliate or any such Plan to which the Company or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“Principal Amortization Payment Date” means, with respect to any Loan made as of the Closing Date, the first Business Day of each January, April, July and October commencing

January 1, 2019, and with respect to any Loan made after the Closing Date, the first Business Day of each January, April, July and October which is more than 90 days after the date on which such Loan as made.

“Property Pool” means, collectively, as of any date, the Financed Properties constituting Collateral as of such date.

“Qualified ECP Guarantor” shall mean, at any time, each Loan Party with total assets exceeding \$10,000,000 or that qualifies at such time as an “eligible contract participant” under the Commodity Exchange Act and can cause another Person to qualify as an “eligible contract participant” at such time under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Real Estate Support Documents” means, for each Financed Property, (a) mortgagee title insurance policies (in amounts and with endorsements reasonably acceptable to the Lender and insuring over, and without exception for, any then existing or future mechanics, materialmen or similar Liens), and such surveys (certified to the Lender and applicable title insurance company), zoning reports, appraisals (including FIRREA Appraisals), environmental reports (including Phase I and if requested by the Lender, Phase II environmental assessments) and other mortgage-related documents, as the Lender may reasonably request, (b) a lessee estoppel, subordination and attornment agreement in substantially the form attached hereto as Exhibit E, or such other form as the Lender may accept in its sole discretion, (c) third party consents, flood hazard certifications, and evidence of flood insurance (if required), as the Lender may reasonably request; and (d) such lessee’s affidavits and opinions of local counsel with respect to the Mortgages as the Lender may reasonably request. Each Phase I or Phase II environmental assessment described above shall be (i) prepared by an environmental expert acceptable to the Lender and (ii) dated as of a date within twelve (12) months before the Closing Date (or, if the applicable Financed Property is an Added Property, a date within twelve (12) months before the date of addition of such property to the Property Pool).

“Recipient” means the Lender or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder.

“Related Loan” means, with respect to any Financed Property, (a) the Loan made with respect to such Financed Property or (b) the Loan made with respect to another Financed Property that was replaced by such Financed Property (either directly through a Collateral Substitution or indirectly through a series of successive Collateral Substitutions).

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“Remaining Property” has the meaning specified in the definition of “Collateral Substitution Test”.

“Removal Event” has the meaning specified in the definition of “Syndicated Credit Agreement”.

“Removed Property” has the meaning specified in the definition of “Collateral Substitution”.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

“Revolving Administrative Agent” has the meaning specified in the definition of Syndicated Credit Agreement.

“Responsible Officer” means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer or controller of a Loan Party and solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01, the secretary or any assistant secretary of a Loan Party and, solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Lender. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Sanction(s)” means any international economic sanction administered or enforced by the United States Government (including without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“Scheduled Unavailability Date” has the meaning specified in Section 3.03(b).

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Second Amendment Effective Date” means February 19, 2020.

“Secured Hedge Agreement” means any Swap Contract permitted under Article VII that is (a) entered into by and between any Loan Party and any Hedge Bank and (b) related to any Loan or portion thereof.

“Security Instruments” means, collectively or individually as the context may indicate, the Mortgages and all other agreements, instruments and other documents, whether now existing or hereafter in effect, pursuant to which any Borrower, any other Loan Party or any other Person shall grant or convey to the Lender a Lien on, or any other Person shall acknowledge any such Lien on, property as security for all or any portion of the Obligations, any other obligation under any Loan Document.

“SOFR” means the Secured Overnight Financing Rate as administered by the Federal Reserve Bank of New York (or a successor administrator).

“SOFR Adjustment” with respect to Daily Simple SOFR means 0.10% (10 basis points).

“Specified Financed Properties” means the Financed Properties owned by Atlanta Real Estate Holdings L.L.C. and located at 2550 The Nalley Way, Atlanta, GA 30360 and 2500 The Nalley Way, Atlanta, GA 30360.

“Specified Loan Party” means any Loan Party that is not then an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to Section 9.18).

“Subordination and Attornment Agreement” has the meaning specified in Section 7.06.

“Subsequent Provision” means (a) any amendment to, consent to, or waiver of any covenant or agreement contained in Article VI (Affirmative Covenants) or Article VII (Negative Covenants) of the Syndicated Credit Agreement which has been incorporated by reference into Article VI (Affirmative Covenants) or Article VII (Negative Covenants) or (b) any covenant or agreement that is added to Article VI (Affirmative Covenants) or Article VII (Negative Covenants) of the Syndicated Credit Agreement, in each case after the date hereof (and including pursuant to any amendment or restatement of the Syndicated Credit Agreement), as such amended or additional covenant, or agreement is in effect on the date so amended or added (without giving effect to any subsequent amendment or other modification thereof unless the terms thereof qualify as a “Subsequent Provision” hereunder); provided that, in the event Bank of America shall have received any amendment, consent, waiver or work fee in its capacity as a “Lender” under the Syndicated Credit Agreement in connection with such amendment, consent, amendment and restatement, waiver or agreement, (a “Syndicated Lender Fee”), in order for such amendment, consent, amendment and restatement, waiver or agreement to be considered a “Subsequent Provision” hereunder, the Lender shall have received fees equal to (x) fifty percent (50%) times (y) the basis points used in calculating the Syndicated Lender Fee times (z) the Outstanding Amount, received by Bank of America (in its capacity as a lender) under the Syndicated Credit Agreement; provided further however, (A) such fees shall not exceed five (5) basis points of the Outstanding Amount and (B) such fees shall only be required to be paid in the case when such Subsequent Provision provides an accommodation to or is otherwise less restrictive on the Company and its Subsidiaries than the covenants and agreements in effect immediately prior to such Subsequent Provision.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Company.

“Subsidiary Guarantors” means, collectively, all Subsidiaries executing the Guaranty on the Closing Date and all other Subsidiaries that enter into a Joinder Agreement as a Subsidiary Guarantor.

“Successor Rate” has the meaning specified in Section 3.03(b).

“Swap Contract” means any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement.

“Swap Obligations” means with respect to any Guarantor any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include the Lender or any Affiliate of the Lender).

“Syndicated Credit Agreement” means that certain Second Amended and Restated Credit Agreement dated as of July 25, 2016 among the Company, as a Borrower, certain of its Subsidiaries as Vehicle Borrowers, Bank of America, N.A., as Administrative Agent (in such capacity, the “Revolving Administrative Agent”), Revolving Swing Line Lender, New Vehicle Floorplan Swing Line Lender and Used Vehicle Floorplan Swing Line Lender and L/C Issuer, and the other lenders party thereto, as the same Second Amended and Restated Credit Agreement may be amended, amended and restated, modified, supplemented or replaced from time to time, provided, that, at the time upon which Bank of America (i) is no longer the Revolving Administrative Agent or (ii) is no longer the left-lead arranger (either event of clause (i) or (ii) above being hereinafter referred to as a “Removal Event”) under such facility (including any such replacement facility), any references herein to the Syndicated Credit Agreement shall be to the Syndicated Credit Agreement as in effect immediately prior to such Removal Event. In the event that (x) all outstanding loans and other obligations under the then existing Syndicated Credit Agreement have been paid in full (other than (1) contingent indemnification obligations as to which no claim has been made and (2) obligations and liabilities under secured hedge agreements as to which arrangements satisfactory to the applicable hedge bank have been made), (y) all commitments under such Syndicated Credit Agreement have terminated and (z) such Syndicated Credit Agreement has not been replaced by a credit agreement that constitutes a Syndicated Credit Agreement (such event satisfying all of conditions (x), (y) and (z) being referred to as an “SCA Termination Event”), any references herein to the Syndicated Credit Agreement shall be to the Syndicated Credit Agreement as in effect immediately prior to such SCA Termination Event.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

[“Third Amendment” means that certain Third Amendment to Credit Agreement, dated as of the Third Amendment Effective Date, by and among the Borrowers, the Guarantors, and the Lender.](#)



“Third Amendment Effective Date” means May 25, 2022.

“Type” means with respect to a Loan, its character as a Base Rate Loan or a ~~Eurodollar Rate~~Daily Simple SOFR Loan.

“UCC” means the Uniform Commercial Code as in effect in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“United States” and “U.S.” mean the United States of America.

“Used Vehicle” means a Vehicle other than a New Vehicle.

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“Vehicle” means any automobile or truck approved for highway use by any State of the United States.

“2013 Real Estate Credit Agreement” means the Credit Agreement dated as of September 26, 2013 among the Company, certain of its Subsidiaries, as Borrowers, and Bank of America, N.A., as lender, as the same Credit Agreement may be amended, amended and restated, modified, supplemented or replaced from time to time.

## **1.02 Other Interpretive Provisions**

. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Any capitalized terms used herein but not defined herein that are defined in the UCC shall have the respective meanings assigned to such terms in the UCC. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions

consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including,” the words “to” and “until” each mean “to but excluding,” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) Any reference herein to a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or any allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

### **1.03 Accounting Terms.**

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Company and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Company or the Lender shall so request, the Lender and the Company shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Company shall provide to the Lender financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding anything else set forth herein, any lease that was or would have been treated as an operating lease under GAAP as in effect on the Closing Date that would become or be treated as a capital lease solely as a result of a change in GAAP after the Closing Date shall always be treated as an operating lease for all purposes and at all times under this Agreement; provided that, the Company shall nonetheless provide to the Lender financial statements and other

documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

(c) **Rounding.** Any financial ratios required to be maintained by the Company pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

#### **1.04 Times of Day**

. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

#### **1.05 References to Defined Terms in the Syndicated Credit Agreement**

(a) The following terms shall have the meanings assigned thereto in the Syndicated Credit Agreement, as of the date hereof:

- (i) Acquisition,
- (ii) Aggregate Revolving Commitments,
- (iii) Approved Fund,
- (iv) Available Unused Revolving Commitments,
- (v) Investment,
- (vi) New Vehicle Floorplan Commitments,
- (vii) Permitted Floorplan Indebtedness,
- (viii) Permitted Liens,
- (ix) Permitted Real Estate Debt,
- (x) Restricted Subsidiary,
- (xi) Revolving Commitments,
- (xii) Subordinated Indebtedness,
- (xiii) Subordinated Indenture Indebtedness, and
- (xiv) Used Vehicle Floorplan Commitments.

(b) The following terms shall have the meanings assigned thereto in the Syndicated Credit Agreement in effect from time to time (including all related defined terms referred to therein), provided that, in the event of any Removal Event, any references to such terms shall be as such terms were defined in the Syndicated Credit Agreement as in effect immediately prior to such Removal Event:

- (i) Change of Control, and
- (ii) Threshold Amount.

#### **1.06 Interest Rates**

(a) The Lender does not warrant, nor accept responsibility, nor shall the Lender have any liability with respect to the administration, submission or any other matter related to Daily Simple SOFR or with respect to any rate that is an alternative or replacement for or successor to any of such rate (including, without limitation, any Successor Rate) or the effect of any of the foregoing, or of any Conforming Changes. The Lender and its affiliates or other related entities may engage in transactions or other activities that affect any reference rate referred to herein, or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing) or any related spread or other adjustments thereto, in each case, in a manner adverse to the Borrowers. The Lender may select information sources or services in its reasonable discretion to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing), in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrowers or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or other action or omission related to or affecting the selection, determination, or calculation of any rate (or component thereof) provided by any such information source or service.

(b) The parties hereto agree and acknowledge that for administrative purposes the provisions in this Agreement that are amended by the Third Amendment and that relate to Obligations accruing interest at the reference interest rates, including Daily Simple SOFR, shall go into effect as of June 1, 2022, and therefore, notwithstanding anything herein to the contrary, all outstanding Loans, shall in each case during the period from the Third Amendment Effective Date through and including May 31, 2022, accrue interest at the Eurodollar Rate or Base Rate (including, if applicable, the Default Rate based on the Eurodollar Rate or the Base Rate), and not Daily Simple SOFR. Without limiting the generality of the foregoing, during the period from the Third Amendment Effective Date through and including May 31, 2022, interest shall be subject to the provisions in this Agreement (including without limitation the relevant provisions contained in Sections 1.01, 1.06, 2.05, 2.07, 3.02, 3.03 and 3.04 of this Agreement) governing the Applicable Rate, Base Rate, Base Rate Loans and Eurodollar Rate Loans (as such terms were defined in this Agreement, and as such provisions were in effect, immediately prior to giving effect to the Third Amendment).

## ARTICLE II. THE COMMITMENTS AND LOANS

### 2.01 Loans

. Subject to the terms and conditions set forth herein, the Lender agrees to make up to fourteen (14) term loans (each such term loan, a “Loan”) to the Borrowers from time to time on any Business Day during the Availability Period; provided however, that, (a) each Loan shall be made to the applicable Borrower with respect to a single Financed Property (except that in the case of the Specified Financed Properties, a Loan may be made to the applicable Borrower with respect to all three Specified Financed Properties) identified in the Loan Notice for such Loan (it being understood and agreed that any Financed Property may only be used for one such Loan); (b) each Loan shall be made only on a Business Day; (c) more than one Loan may be made on the same day, but the number of days on which Loans are made shall not exceed four (4) in the aggregate; (d) after giving effect to any Borrowing, the aggregate Outstanding Amount shall not exceed the Lender’s Commitment; (e) the aggregate principal amount of the applicable Loan with respect to any Financed Property or Financed Properties (i) identified on Schedule 2.01 shall not exceed the amount indicated with respect to such property or properties under the column “Maximum Amount” on Schedule 2.01 or (ii) included in the Property Pool pursuant to clause (e)(ii) below shall not exceed an amount equal to eighty-five percent (85%) of the Adjusted FIRREA Appraisal Value of such Financed Property; and (f) no Loan shall be advanced with respect to any Financed Property other than those properties (i) listed on Schedule 2.01 or (ii) for which all the requirements set forth in Section 4.02(d) have been satisfied. The principal amount of each Loan outstanding hereunder from time to time shall bear interest, and the Loans shall be repayable, in each case, as herein provided. No amount of any Loan repaid or prepaid by any Borrower may be reborrowed. Loans may be Base Rate Loans or ~~Eurodollar-Rate~~Daily Simple SOFR Loans, as further provided herein. No Financed Property may be the subject of more than one Loan.

### 2.02 Borrowings, Conversions and Continuations of Loans.

(a) Each Borrowing and each conversion of Loans from one Type to the other shall be made upon the Company’s irrevocable notice to the Lender, which may be given by telephone. Each such notice must be received by the Lender not later than 1:00 p.m. (i) one Business Day prior to the requested date of any Borrowing of ~~Eurodollar-Rate~~Daily Simple SOFR Loans or of any conversion of ~~Eurodollar-Rate~~Daily Simple SOFR Loans to Base Rate Loans, and (ii) one Business Day prior to the requested date of any Borrowing of Base Rate Loans; provided that any such notice of Borrowing delivered in connection with initial funding on the Closing Date may be provided on the Closing Date. Each telephonic notice by the Company pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Lender of a written Loan Notice, appropriately completed and signed by a Responsible Officer of the Company. Each Borrowing of, conversion to or continuation of ~~Eurodollar-Rate~~Daily Simple SOFR Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof. Each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Loan Notice (whether telephonic or written) shall specify (i) whether the Company is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of ~~Eurodollar-Rate~~Daily Simple SOFR Loans, (ii) the requested date of the Borrowing or conversion, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed or converted, (iv) the Type of Loans to be borrowed or to which existing Loans are to be converted, (v) the applicable Borrower and (vi) the applicable Financed Property or Financed Properties. If the

Company fails to provide a timely Loan Notice requesting a conversion of ~~Eurodollar Rate~~ Daily Simple SOFR Loans to Base Rate Loans, such Loans shall, subject to Article III, continue as ~~Eurodollar Rate~~ Daily Simple SOFR Loans. If the Company fails to specify a Type of Loan in a Loan Notice, then the applicable Loans shall, subject to Article III, be made as, or converted to, ~~Eurodollar Rate~~ Daily Simple SOFR Loans.

(b) Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is an initial Borrowing, Section 4.01), the Lender shall make all funds available to the applicable Borrower either by (i) crediting the account of such Borrower on the books of the Lender with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Lender by the Company.

(c) ~~The Lender shall promptly notify the Company of the interest rate applicable to any Eurodollar Rate Loans upon determination of such interest rate.~~ At any time that Base Rate Loans are outstanding, the Lender shall notify the Company of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

### **2.03 Prepayments; Termination or Reduction of Commitment.**

(a) Each Borrower may, upon notice by the Company to the Lender, at any time or from time to time voluntarily prepay Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Lender not later than 1:00 p.m. on the date of prepayment of such Loans; (ii) any prepayment of Loans shall be (A) in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof, or (B) in the case of the prepayment in full of any Loan with respect to a particular Financed Property or particular Financed Properties, in the aggregate outstanding amount of the Loan made in connection with such Financed Property or Financed Properties and all accrued but unpaid interest thereon. Each such notice shall specify the date and amount of such prepayment, the Type(s) of Loans to be prepaid and the particular Financed Property or Financed Properties relating to each Loan being prepaid. If such notice is given by the Company, the applicable Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Each such prepayment shall be applied to the remaining installments of principal of the Loans in the inverse order of maturity.

(b) If for any reason the Outstanding Amount at any time exceeds the Commitment then in effect, the Borrowers shall immediately prepay Loans in an aggregate amount equal to such excess. The Lender, in its sole discretion, shall determine which Loans (or portions thereof) are deemed prepaid by such prepayment.

(c) If the Austin Financed Property or any building located at such Financed Property is damaged or destroyed to such an extent that, under applicable Law, such Financed Property or such building may not be repaired, redeveloped or rebuilt or such Financed Property may not be used as a Vehicle dealership (an "Austin Casualty Event"), then the Borrowers shall, within twelve (12) months after the date of such Austin Casualty Event, either: (a) repay to the Lender the entire outstanding principal balance of any Loan associated with the Austin Financed Property and all accrued and unpaid interest and any fees associated therewith, (b) obtain an amendment to, or a variance under, such Law so that such repair, redevelopment or rebuilding is permitted and the Austin Financed Property may continue to be used as a Vehicle dealership at

all times after the end of such 12-month period, or (c) effectuate a Collateral Substitution for the entire Austin Financed Property pursuant to the terms and conditions of this Agreement, and, in the case of such a Collateral Substitution, satisfy the Collateral Substitution Test.

## 2.04 Repayment of Loans.

(a) Each Borrower shall make quarterly amortization payments with respect to each of its respective Loans on each Principal Amortization Payment Date. Each such quarterly amortization payment (i) in respect of all Loans (other than the Loan made with respect to the Specified Financed Properties) shall be in an amount equal to 1.25% of the initial principal amount of such Loan and (ii) in respect of the Loan made with respect to the Specified Financed Properties shall be in amount equal to 1.25% of the principal amount of such Loan on the Second Amendment Effective Date.

(b) The Borrowers shall repay to the Lender on the date of any Permitted Financed Property Disposition any amounts required to be paid as set forth in the definition of "Permitted Financed Property Disposition."

(c) The Borrowers shall repay to the Lender on the Maturity Date the aggregate principal amount of Loans outstanding on such date.

## 2.05 Interest.

(a) Subject to the provisions of subsection (b) below, (i) each ~~Eurodollar Rate~~ Daily Simple SOFR Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to ~~the Eurodollar Rate~~ Daily Simple SOFR plus the Applicable Rate; and (ii) each Base Rate Committed Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) (i) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) Upon the request of the Lender, if any amount (other than principal of any Loan) payable by any Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Upon the request of the Lender, while any Event of Default exists (other than as set forth in clauses (b)(i) and (b)(ii) above), the applicable Borrowers shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.



(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

## 2.06 Automatic Debit Authorization

. The Company and each Borrower hereby agree that interest on Loans and principal payments with respect to Loans required to be paid pursuant to this Agreement may be deducted from the Company's account with Bank of America referenced below or such other account as identified in writing by the Company from time to time:

Account Name: **Asbury Automotive Group, LLC**  
Account Name: **3447413354**  
ABA Number: **026009593**  
Bank: **Bank of America, N.A.**

Without limiting the generality of the foregoing, the Lender may debit such account (a) for interest on each Interest Payment Date and on the Maturity Date and (b) for scheduled principal payments on each Principal Amortization Payment Date and on the Maturity Date. The Company and the Borrowers will maintain sufficient funds in the account on the dates the Lenders enters debits authorized by this Section. If there are insufficient funds in the account on the date the Lender enters any debit authorized by this Agreement, the debit will be reversed. Nothing contained in this Section will alter any obligation of any Loan Party to pay any amount required by this Agreement or any other Loan Document.

## 2.07 Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate

. All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to ~~the Eurodollar Rate~~ [Daily Simple SOFR](#)) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to [Section 2.09\(a\)](#), bear interest for one day. Each determination by the Lender of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

## 2.08 Evidence of Debt

. The Loans made by the Lender shall be evidenced by one or more accounts or records maintained by the Lender in the ordinary course of business. The accounts or records maintained by the Lender shall be conclusive absent manifest error of the amount of the Loans made by the Lender to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. Upon the request of the Lender, the Borrowers shall execute and deliver to the Lender a Master Note, which shall

evidence the Loans in addition to such accounts or records. The Lender may attach schedules to the Master Note and endorse thereon the date, Type (if applicable), amount and maturity of the Loans and payments with respect thereto.

## **2.09 Payments Generally.**

(a) General. All payments to be made by any Borrower shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by any Borrower hereunder shall be made to the Lender, at the Lender's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. All payments received by the Lender after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by any Borrower or the Company shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) Funding Source. Nothing herein shall be deemed to obligate the Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by the Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

## **2.10 Borrowers.**

(a) Effective as of the date hereof, each Subsidiary that has executed this Agreement as a Borrower shall be a "Borrower" hereunder and may receive or cause the Company (as agent for such Subsidiary) to receive Loans for the account of such Subsidiary on the terms and conditions set forth in this Agreement.

(b) In the event of any proposed Collateral Substitution wherein any Subsidiary which owns the real property proposed to be a Financed Property in connection with such Collateral Substitution is not an existing Borrower, the Company shall designate such Subsidiary as a Borrower and such Subsidiary shall deliver the documents required by Section 6.05 prior to or substantially simultaneously with such proposed Financed Property entering the Property Pool, including the delivery of a Joinder Agreement executed by such Subsidiary identifying such Subsidiary as a Borrower. The parties hereto acknowledge and agree that prior to any such Subsidiary becoming entitled to receive Loans hereunder, the Lender shall have received the documents required by Section 6.05. Upon satisfaction of the foregoing requirements and any other requirements herein applicable to any such Subsidiary becoming a Borrower hereunder and any proposed Financed Property entering the Property Pool, the Lender agrees to permit such Borrower to receive Loans hereunder on the terms and conditions set forth herein, and each of the parties agrees that such Borrower otherwise shall be a Borrower for all purposes of this Agreement.

(c) Notwithstanding any other provision of this Agreement, each Borrower shall be jointly and severally liable as a primary obligor, and not merely as surety, for any and all Obligations, whether voluntary or involuntary and however arising, whether direct or acquired by the Lender by assignment or succession, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined (such Obligations, the "Borrowers' Liabilities").

(d) Each Borrower expressly waives any and all defenses now or hereafter arising or asserted by reason of (i) any lack of legality, validity or enforceability of this Agreement, of the Master Note, of any other Loan Document, or of any other agreement or instrument creating, providing security for, or otherwise relating to any of the Obligations or any guaranty of any of the Borrowers' Liabilities (the Loan Documents and all such other agreements and instruments being collectively referred to as the "Related Agreements"); (ii) any action taken under any of the Related Agreements, any exercise of any right or power therein conferred, any failure or omission to enforce any right conferred thereby, or any waiver of any covenant or condition therein provided; (iii) any acceleration of the maturity of any of the Borrowers' Liabilities or of any other obligations or liabilities of any Person under any of the Related Agreements; (iv) any release, exchange, non-perfection, lapse in perfection, disposal, deterioration in value, or impairment of any security for any of the Borrowers' Liabilities, or for any other obligations or liabilities of any Person under any of the Related Agreements; (v) any dissolution of any Borrower, any Loan Party or any other party to a Related Agreement, or the combination or consolidation of any Borrower, any Loan Party or any other party to a Related Agreement into or with another entity or any transfer or disposition of any assets of any Borrower, any Loan Party or any other party to a Related Agreement; (vi) any extension (including without limitation extensions of time for payment), renewal, amendment, restructuring or restatement of, any acceptance of late or partial payments under, or any change in the amount of any borrowings or any credit facilities available under, this Agreement, the Master Note or any other Loan Document or any other Related Agreement, in whole or in part; (vii) the existence, addition, modification, termination, reduction or impairment of value, or release of any other guaranty (or security therefor) of the Borrowers' Liabilities; (viii) any waiver of, forbearance or indulgence under, or other consent to any change in or departure from any term or provision contained in this Agreement, any other Loan Document or any other Related Agreement, including without limitation any term pertaining to the payment or performance of any of the Borrowers' Liabilities, or any of the obligations or liabilities of any party to any other Related Agreement; and (ix) any other circumstance whatsoever (with or without notice to or knowledge of such Borrower) which may or might in any manner or to any extent vary the risks of such Borrower, or might otherwise constitute a legal or equitable defense available to, or discharge of, a surety or a guarantor, including without limitation any right to require or claim that resort be had to any Borrower or any other Loan Party or to any collateral in respect of the Borrowers' Liabilities. It is the express purpose and intent of the parties hereto that the joint and several liability of each Borrower for the Borrowers' Liabilities shall be absolute and unconditional under any and all circumstances and shall not be discharged except by payment as herein provided. Notwithstanding the foregoing, the liability of each Borrower with respect to its Borrowers' Liabilities shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code of the United States or any comparable provisions of any applicable state law.

(e) Each Borrower hereby irrevocably appoints the Company as its agent for all purposes relevant to this Agreement and each of the other Loan Documents, including (i) the giving and receipt of notices, (ii) the execution and delivery of all documents, instruments and certificates contemplated herein and all modifications hereto, and (iii) the receipt of the proceeds of any Loan made by the Lender to any such Borrower hereunder. Any acknowledgment, consent, direction, certification or other action which might otherwise be valid or effective only if given or taken by all Borrowers, or by any Borrower acting singly, shall be valid and effective if given or taken only the Company, whether or not any such other Borrower joins therein. Any notice, demand, consent, acknowledgement, direction, certification or other communication

delivered the Company in accordance with the terms of this Agreement shall be deemed to have been delivered the Company and each other Borrower.

## 2.11 [Reserved].

## 2.12 Amendments to 2013 Real Estate Credit Agreement

. At such time as the outstanding amount of the Loans hereunder exceeds \$20,000,000, Bank of America, N.A., in its capacity as the lender under the 2013 Real Estate Credit Agreement, agrees to enter into an amendment to the 2013 Real Estate Credit Agreement to (a) reduce the interest rate pricing (including "Applicable Rates") thereunder to match the interest rate pricing (including Applicable Rates) in this Agreement, (b) amend the definition of "Syndicated Credit Agreement" in the 2013 Real Estate Credit Agreement to match the definition of "Syndicated Credit Agreement" in this Agreement and (c) add a covenant substantively similar to Section 6.12, provided that the amendment to the 2013 Real Estate Credit Agreement would not (y) permit raw land that is not under development or (z) contain exceptions for (i) the use of a portion of the Marietta/2086 Cobb Financed Property as a restaurant or (ii) the use of a portion of the Marietta/2086 Cobb Financed Property for use as the site of a cell tower.

## ARTICLE III. TAXES, YIELD PROTECTION AND ILLEGALITY

### 3.01 Taxes

#### (a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws (as determined in the good faith discretion of the Lender) require the deduction or withholding of any Tax from any such payment by the Lender or a Loan Party, then the Lender or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to this Agreement.

(ii) If any Loan Party or the Lender shall be required by the Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding taxes, from any payment, then (A) the Lender shall withhold or make such deductions as are determined by the Lender to be required based upon the information and documentation it has received pursuant to this Agreement, (B) the Lender shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(iii) If any Loan Party or the Lender shall be required by any applicable Laws other than the Code to withhold or deduct any Taxes from any payment, then (A) such

Loan Party or the Lender, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Loan Party or the Lender, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrowers. Without limiting the provisions of subsection (a) above, each Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Lender timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnifications.

(i) Each Borrower shall, and does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Company by the Lender shall be conclusive absent manifest error.

(ii) The Lender shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, the Borrowers, as applicable, against any Excluded Taxes attributable to such Lender that are payable or paid by a Borrower in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority.

(d) Evidence of Payments. Upon request by any Borrower or the Lender after any payment of Taxes by any Borrower or the Lender to a Governmental Authority as provided in this Section 3.01, such Borrower shall deliver to the Lender or the Lender shall deliver to such Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Company or such Borrower or the Lender, as the case may be.

(e) Status of Lender; Tax Documentation.

(i) If Lender is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document, the Lender shall deliver to the Company, at the time or times reasonably requested by the Company, such properly

completed and executed documentation reasonably requested by the Company as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, the Lender, if reasonably requested by the Company, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Company as will enable the Company to determine whether or not the Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), and (ii)(B) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject the Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of the Lender.

(ii) Without limiting the generality of the foregoing, in the event that any Borrower is a U.S. Person,

(A) the Lender (to the extent it is a U.S. Person) shall deliver to the Company on or prior to the Closing Date (and from time to time thereafter upon the reasonable request of the Company), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) in the event Lender is a Foreign Lender, such Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Company (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes the Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Company), whichever of the following is applicable:

(I) in the case of any such Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(II) executed originals of IRS Form W-8ECI;

(III) in the case of any such Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit G-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of any Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed originals of IRS Form W-8BEN; or

(IV) to the extent any such Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-2 or Exhibit G-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if such Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-4 on behalf of each such direct and indirect partner;

(C) in the event Lender is a Foreign Lender, any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Company (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Company), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Company to determine the withholding or deduction required to be made; and

(D) if a payment made to the Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if the Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), the Lender shall deliver to the Company at the time or times prescribed by law and at such time or times reasonably requested by the Company such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Company as may be necessary for the Company to comply with its obligations under FATCA and to determine that the Lender has complied with the Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (B), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Company and the Lender in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. If any Recipient determines, in its sole discretion, that it has received a refund of any Taxes as to which it has been indemnified by the Company or any other Borrower or with respect to which the Company or any Borrower has paid additional amounts pursuant to this Section 3.01, it shall pay to the Company or such Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Company under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with

respect to such refund), provided that the Company and each other Borrower, upon the request of the Recipient, agrees to repay the amount paid over to the Company or such Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to the Company or any other Borrower pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Company, any Borrower, or any other Person.

(g) Survival. Each party's obligations under this Section 3.01 shall survive any assignment of rights by, the Lender, the termination of the Commitment and the repayment, satisfaction or discharge of all other Obligations.

### **3.02 Illegality**

. If the Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the Lender or its Lender's Office to make, maintain or fund Loans whose interest is determined by reference to ~~the Eurodollar Rate~~Daily Simple SOFR, or to determine or charge interest rates based upon ~~the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of the Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market~~Daily Simple SOFR, then, on notice thereof by the Lender to the Company, (a) any obligation of the Lender to make or continue ~~Eurodollar Rate~~Daily Simple SOFR Loans or to convert Base Rate Loans to ~~Eurodollar Rate~~Daily Simple SOFR Loans shall be suspended, and (b) if such notice asserts the illegality of the Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the ~~Eurodollar Rate~~Daily Simple SOFR component of the Base Rate, the interest rate on which Base Rate Loans of the Lender shall, if necessary to avoid such illegality, be determined by the Lender without reference to the ~~Eurodollar Rate~~Daily Simple SOFR component of the Base Rate, in each case until the Lender notifies the Company that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (i) each Borrower (jointly and severally) shall, upon demand from the Lender, prepay or, if applicable, convert all ~~Eurodollar Rate~~Daily Simple SOFR Loans to Base Rate Loans (the interest rate on which Base Rate Loans shall, if necessary to avoid such illegality, be determined by the Lender without reference to the ~~Eurodollar Rate~~Daily Simple SOFR component of the Base Rate), ~~either on the last day of the Interest Period therefor, if the Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if the Lender may not lawfully continue to maintain such Eurodollar Rate Loans~~ immediately and (ii) if such notice asserts the illegality of the Lender determining or charging interest rates based upon ~~the Eurodollar Rate~~Daily Simple SOFR, the Lender shall during the period of such suspension compute the Base Rate without reference to the ~~Eurodollar Rate~~Daily Simple SOFR component thereof until the Lender determines that it is no longer illegal for the Lender to determine or charge interest rates based upon ~~the Eurodollar Rate~~Daily Simple SOFR. Upon any such prepayment or conversion, each Borrower (jointly and severally) shall also pay accrued interest on the amount so prepaid or converted.



### 3.03 Inability to Determine Rates

(a) If in connection with any request for a ~~Eurodollar Rate~~ Daily Simple SOFR Loan or a conversion ~~to of Base Rate Loans~~ to Daily Simple SOFR Loans or a continuation ~~thereof, of any of such Loans, as applicable,~~ (i) the Lender determines ~~that (A) Dollar deposits are not being offered to banks in the applicable offshore interbank market for such currency for the applicable amount and Interest Period of such Eurodollar Rate Loan~~ (which determination shall be conclusive absent manifest error) that (A) no Successor Rate has been determined in accordance with Section 3.03(b), and the circumstances under clause (i) of Section 3.03(b) or the Scheduled Unavailability Date has occurred, or (B) adequate and reasonable means do not otherwise exist for determining the ~~Eurodollar Rate~~ Daily Simple SOFR for any requested Interest Period with respect to a proposed ~~Eurodollar Rate~~ Daily Simple SOFR Loan or in connection with an existing or proposed Base Rate Loan ~~(in each case with respect to clause (i) above, "Impacted Loans"),~~ or (ii) the Lender determines ~~that~~ for any reason ~~the Eurodollar Rate for any requested Interest Period~~ that Daily Simple SOFR with respect to a proposed ~~Eurodollar Rate~~ Loan does not adequately and fairly reflect the cost to the Lender of funding such ~~Eurodollar Rate~~ Loan, the Lender will promptly so notify the Company.

Thereafter, (x) the obligation of the Lender to make or maintain ~~Eurodollar~~ Daily Simple SOFR Loans, or to convert Base Rate Loans to Daily Simple SOFR Loans, shall be suspended (to the extent of the affected ~~Eurodollar Rate~~ Daily Simple SOFR Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the ~~Eurodollar Rate~~ Daily Simple SOFR component of the Base Rate, the utilization of the ~~Eurodollar Rate~~ Daily Simple SOFR component in determining the Base Rate shall be suspended, in each case until the Lender revokes such notice.

Upon receipt of such notice, ~~(i) the Company may revoke any pending request for a Borrowing of, or conversion to, or continuation of Eurodollar Rate Daily Simple SOFR Loans (to the extent of the affected Eurodollar Rate Daily Simple SOFR Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Committed Borrowing of Base Rate Loans in the amount specified therein. Notwithstanding the foregoing, if the Lender has made the determination described in clause and (iii) of the first sentence of this clause (a), the Lender, in consultation with the Company, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (1) the Lender revokes the notice delivered with respect to the Impacted~~ any outstanding Daily Simple SOFR Loans shall be deemed to have been converted to Base Rate Loans under clause (i) immediately.

~~(b) Replacement of the first sentence of this section, (2) the Lender notifies the Company that such alternative interest rate does not adequately and fairly reflect the cost to the Lender of funding the Impacted Loans, or (3) the Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the Lender or its applicable Lender's Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of the Lender to do any of the foregoing and provides the Company written notice thereof.~~

~~(b) LIBOR~~ Daily Simple SOFR or Successor Rate. Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Lender determines (which

determination shall be conclusive absent manifest error), or the ~~Borrowers notify~~Company notifies the Lender that the ~~Borrowers have~~Company has determined, that:

~~(i)~~(i) adequate and reasonable means do not exist for ascertaining ~~LIBOR for any applicable interest period~~Daily Simple SOFR, including, without limitation, because the ~~LIBOR Screen~~Daily Simple SOFR Published Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

~~(ii)~~(ii) the ~~Federal Reserve Bank of New York or any successor~~ administrator of the ~~LIBOR Screen~~Daily Simple SOFR Published Rate or a Governmental Authority having jurisdiction over the Lender ~~or such administrator with respect to its publication of Daily Simple SOFR, in each case acting in such capacity,~~ has made a public statement identifying a specific date after which ~~LIBOR~~Daily Simple SOFR or the ~~LIBOR Screen~~Daily Simple SOFR Published Rate shall ~~or will~~ no longer be made available, or ~~permitted to be~~ used for determining the interest rate of ~~loans (such specific date~~U.S. dollar denominated syndicated loans, or shall or will otherwise cease, provided that, at the time of such statement, there is no successor administrator that is satisfactory to the Lender, that will continue to provide Daily Simple SOFR after such specific date (the latest date on which Daily Simple SOFR or the Daily Simple SOFR Published Rate is no longer available permanently or indefinitely, the “Scheduled Unavailability Date”); ~~or;~~

~~(iii)—syndicated loans currently being executed, or that include language similar to that contained in this Section, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR,~~

then, ~~reasonably promptly after such determination on a date and time determined~~ by the Lender ~~or receipt by the Lender of such notice, as applicable, (any such date, the “Daily Simple SOFR Replacement Date”), which date shall be on the relevant interest payment date, as applicable, for interest calculated and, solely with respect to clause (ii) above, no later than the Scheduled Unavailability Date,~~ the Lender and the ~~Borrowers~~Company may amend this Agreement ~~to replace LIBOR solely for the purpose of replacing Daily Simple SOFR or any then current Successor Rate in accordance with this Section 3.03 at the relevant interest payment date or payment period for interest calculated, as applicable, with an alternate~~alternative benchmark rate ~~(giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities syndicated and agented in the United States for such alternative benchmark. and, in each case, including any mathematical or other adjustments to the such benchmark (if any) incorporated therein);~~ giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated ~~syndicated~~syndicated and agented in the United States for such ~~alternative benchmarks (benchmark, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Lender from time to time in its reasonable discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate, and adjustments, shall constitute a “LIBOR Successor Rate”);~~ ~~together with any proposed LIBOR Successor Rate Conforming Changes (as defined below) and any such amendment shall become effective at 5:00 p.m. (New York time) on the fifth Business Day after the Lender shall have posted such proposed amendment to the Borrowers.~~

~~If no LIBOR Successor Rate has been determined and the circumstances under clause (i) above exist or the Scheduled Unavailability Date has occurred (as applicable), the Lender will promptly so notify the Borrower. Thereafter, (x) any obligation of the Lender to make or maintain Loans based on LIBOR shall be suspended (to the extent of the affected Loans or~~

applicable interest periods), and (y) the LIBOR Rate component shall no longer be utilized in determining the Base Rate. Upon receipt of such notice, any affected Loans will be subject to the foregoing clause (y)

The Lender will promptly (in one or more notices) notify the Company of the implementation of any Successor Rate.

Any Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Lender, such Successor Rate shall be applied in a manner as otherwise reasonably determined by the Lender.

Notwithstanding anything else herein, ~~any definition of LIBOR~~ if at any time any Successor Rate ~~shall provide that in no event shall such LIBOR Successor Rate~~ as so determined would otherwise be less than zero, the Successor Rate will be deemed to be zero for the purposes of this Agreement and the other Loan Documents.

~~As used above:~~

~~“LIBOR Screen Rate” means the LIBOR quote on the applicable screen page the Lender designates to determine LIBOR (or such other commercially available source providing such quotations as may be designated by the Lender from time to time).~~

~~“LIBOR Successor Rate Conforming Changes” means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Base Rate, timing and frequency of determining rates and making payments of interest and other administrative matters as may be appropriate, in the discretion of the Lender, to reflect the adoption of such LIBOR Successor Rate and to permit the administration thereof by the Lender in a manner substantially consistent with market practice (or, if the Lender determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as the Lender determines in consultation with the Borrower)~~

In connection with the implementation of a Successor Rate, the Lender will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Lender shall post each such amendment implementing such Conforming Changes to the Company reasonably promptly after such amendment becomes effective.

### **3.04 Increased Costs.**

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, the Lender ~~(except any reserve requirement contemplated by Section 3.04(e));~~

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on the Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or ~~Eurodollar Rate~~ Daily Simple SOFR Loans made by the Lender;

and the result of any of the foregoing shall be to increase the cost to the Lender of making or maintaining any Loan ~~the interest on which is determined by reference to the Eurodollar Rate~~ (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by the Lender (whether of principal, interest or any other amount) then, upon request of the Lender, each Borrower (jointly and severally) will pay to the Lender, as the case may be, such additional amount or amounts as will compensate the Lender, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If the Lender determines that any Change in Law affecting the Lender or any Lender's Office of the Lender or the Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on the Lender's capital or on the capital of the Lender's holding company, if any, as a consequence of this Agreement, the Commitment of the Lender or the Loans made by, the Lender, to a level below that which the Lender or the Lender's holding company could have achieved but for such Change in Law (taking into consideration the Lender's policies and the policies of the Lender's holding company with respect to capital adequacy), then from time to time each Borrower (jointly and severally) will pay to the Lender such additional amount or amounts as will compensate the Lender or the Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of the Lender setting forth the amount or amounts necessary to compensate the Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Company shall be conclusive absent manifest error. Each Borrower shall pay the Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of the Lender to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of the Lender's right to demand such compensation, provided that no Borrower shall be required to compensate the Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that the Lender notifies the Company of the Change in Law giving rise to such increased costs or reductions and of the Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine (9) month period referred to above shall be extended to include the period of retroactive effect thereof).

~~(e) Reserves on Eurodollar Rate Loans. Each Borrower, jointly and severally, shall pay to the Lender, as long as the Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurodollar~~

~~Rate Loan equal to the actual costs of such reserves allocated to such Loan by the Lender (as determined by the Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan, provided the Company shall have received at least ten (10) days' prior notice of such additional interest from the Lender. If the Lender fails to give notice ten (10) days prior to the relevant Interest Payment Date, such additional interest shall be due and payable ten (10) days from receipt of such notice.~~

### **3.05 Designation of a Different Lender's Office**

. If the Lender requests compensation under Section 3.04, or requires any Borrower to pay any Indemnified Taxes or additional amounts to the Lender or any Governmental Authority for the account of the Lender pursuant to Section 3.01, or if the Lender gives a notice pursuant to Section 3.02, then at the request of the Company, the Lender shall use reasonable efforts to designate a different Lender's Office for funding or booking the Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of the Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject the Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to the Lender. Each Borrower (jointly and severally) hereby agrees to pay all reasonable costs and expenses incurred by the Lender in connection with any such designation or assignment.

### **3.06 Survival**

. All of the Company's and each other Borrower's obligations under this Article III shall survive termination of the Commitment, repayment of all other Obligations hereunder, and the Maturity Date.

## **ARTICLE IV. CONDITIONS PRECEDENT TO LOANS**

### **4.01 Conditions of Initial Loans**

. This Agreement shall be effective subject to satisfaction of the following conditions precedent:

(a) The Lender's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Lender:

(i) executed counterparts of (A) this Agreement (B) the Mortgages set forth on Schedule 4.01(a)(i), (C) the Guaranty and (D) the Subordination and Attornment Agreements required to be delivered in connection herewith, in each case, sufficient in number for distribution to the Lender, the Lender's counsel and the Company;

(ii) the Master Note executed by the Borrowers in favor of the Lender;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Lender may require evidencing the identity, authority and capacity of each Responsible Officer

thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party;

(iv) such documents and certifications as the Lender may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in the respective jurisdictions specified in Schedule 4.01(a)(iv), which includes each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(v) a favorable opinion of Jones Day, counsel to the Loan Parties, addressed to the Lender, in the form attached as Exhibit F

(vi) a favorable opinion of local counsel to the Loan Parties in Indiana, Texas, Georgia and North Carolina, addressed to the Lender in form and substance reasonably satisfactory to the Lender, as to such matters concerning the Borrowers the Guarantors, and the Loan Documents as the Lender may reasonably request;

(vii) a certificate of a Responsible Officer of each Loan Party either (A) attaching copies of all consents, licenses and approvals (including pursuant to any Franchise Agreement or Framework Agreement) required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required;

(viii) a certificate signed by a Responsible Officer of the Company certifying (A) that the conditions specified in Sections 4.02(a) and (b) have been satisfied, and (B) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect;

(ix) a certificate signed by the chief financial officer, treasurer or chief accounting officer of the Company, certifying that the Company individually is Solvent and the Loan Parties taken as a whole are Solvent, in each case after giving effect to this Agreement and the other Loan Documents and the Indebtedness pursuant hereto and thereto;

(x) With respect to each Financed Property identified on Schedule 2.01, the Lender shall have received each of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each dated as of the Closing Date or a recent date before the Closing Date and each in form and substance reasonably satisfactory to the Lender:

(A) a satisfactory FIRREA Appraisal;

(B) (x) a Mortgage properly executed by a Responsible Officer of the signing Loan Party and evidence of the proper recordation of such Mortgage in the appropriate filing office (or delivery of such Mortgage to the applicable title

company for recordation), and (y) the Real Estate Support Documents with respect to such Financed Property;

(C) environmental reports (including Phase I and if requested by the Lender, Phase II environmental assessments) as the Lender may reasonably request, in each case (x) prepared by an environmental expert acceptable to Lender and (y) dated as of a date within twelve (12) months before the Closing Date;

(D) evidence that such Financed Property is not a Flood Hazard Property;

(E) a copy of the Lease of such Financed Property to the applicable Subsidiary and any sublease or Memorandum of Lease associated therewith, if any;

(xi) evidence that all insurance (including flood insurance, if applicable) required to be maintained pursuant to the Loan Documents has been obtained and is in effect, including endorsements naming the Lender as an additional insured or lender's loss payee, as the case may be, on all insurance policies maintained with respect to properties of the Company of any Loan Party constituting part of the Collateral;

(xii) UCC financing statements and fixture filings for filing in all places required by applicable law to perfect the Liens of the Lender under the Security Instruments as a perfected Lien as to items of Collateral in which a security interest may be perfected by the filing of financing statements or fixture filings and such other documents and/or evidence of other actions as may be necessary under applicable Law to perfect the Liens of the Lender under the Mortgages and other Security Instruments as a first priority Lien (subject only to Mortgage Permitted Liens) in and to such other Collateral as the Lender may require;

(xiii) UCC search results with respect to the Loan Parties showing only Liens acceptable to the Lender (or pursuant to which arrangements reasonably satisfactory to the Lender shall have been made to remove any unacceptable Liens promptly after the Closing Date);

(xiv) the documentation and other information requested by Lender in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including the PATRIOT Act, in each case at least five days prior to the Closing Date; and

(xv) such other assurances, certificates, documents, consents or opinions as the Lender reasonably may require.

(b) Any fees required to be paid on or before the Closing Date shall have been paid.

(c) Unless waived by the Lender, the Company shall have paid all accrued fees, charges and disbursements of counsel to the Lender (directly to such counsel if requested by the Lender) to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees,

charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Company and the Lender).

#### **4.02 Conditions to all Borrowings**

. The obligation of the Lender to honor any Loan Notice (other than a Loan Notice requesting only a conversion of Loans to the other Type) or to make any Loan pursuant to Section 2.01, or to effect any Collateral Substitution, is subject to the following conditions precedent:

(a) The representations and warranties of the Company and each other Loan Party contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct on and as of the date of such Borrowing or Collateral Substitution, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01 of the Syndicated Credit Agreement.

(b) No Default shall exist or would result from such proposed Borrowing or Collateral Substitution or from the application of the proceeds thereof.

(c) In the event of a Borrowing, the Lender shall have received a Loan Notice in accordance with the requirements hereof.

(d) With respect to each Financed Property which is added to the Property Pool by such Collateral Substitution, the Lender shall have received each of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each dated as of the date of such Loan (or a recent date before the date of such Loan, or, with respect to such Financed Properties to be financed as of the Closing Date, except to the extent permitted to be delivered in accordance with Section 6.10) and each in form and substance reasonably satisfactory to the Lender:

(i) a satisfactory FIRREA Appraisal;

(ii) (x) a Mortgage properly executed by a Responsible Officer of the signing Loan Party and evidence of the proper recordation of such Mortgage in the appropriate filing office (or delivery of such Mortgage to the applicable title company for recordation), and (y) the Real Estate Support Documents with respect to such Financed Property;

(iii) environmental reports (including Phase I and if requested by the Lender, Phase II environmental assessments) as the Lender may reasonably request, in each case (x) prepared by an environmental expert acceptable to Lender and (y) dated as of a date within twelve (12) months before the date of addition of such property to the Property Pool;

(iv) a copy of the Lease of such Financed Property to the applicable Subsidiary and any sublease or Memorandum of Lease associated therewith, if any;



(v) to the extent the applicable lessee is not already a party to the Guaranty, a fully executed Joinder Agreement executed by the lessee under any Lease of such Financed Property joining such lessee to the Guaranty;

(vi) a favorable opinion of local counsel to the Borrowers in the state where such Financed Property is located, addressed to the Lender, as to such matters concerning the Borrowers owning such Financed Property, any Guarantor leasing such property, and the Loan Documents as the Lender may reasonably request;

(vii) a certificate of a Responsible Officer of the Company in form and detail reasonably satisfactory to the Lender (which may be contained in the applicable Loan Notice) demonstrating that the Collateral Substitution Test shall have been met;

(viii) Uniform Commercial Code search results showing no Liens on the Financed Property other than Mortgage Permitted Liens and those liens acceptable to the Lender in its sole discretion;

(ix) delivery of Uniform Commercial Code financing statements and fixture filings suitable in form and substance for filing in all places required by applicable Law to perfect the Liens of the Lender under the Mortgage and other Security Instruments related to such Financed Property as a first priority Lien (subject only to Mortgage Permitted Liens) as to items of Collateral in which a security interest may be perfected by the filing of financing statements or fixture filings, and such other documents and/or evidence of other actions as may be necessary under applicable Law to perfect the Liens of the Lender under the Mortgage and other Security Instruments related to such Financed Property as a first priority Lien (subject only to Mortgage Permitted Liens) in and to such other Collateral as the Lender may require;

(x) evidence that all insurance (including flood insurance, if applicable) required to be maintained pursuant to the Loan Documents with respect to such Financed Property has been obtained and is in effect; and endorsements naming the Lender as an additional insured and loss payee, as the case may be, on all such insurance policies maintained with respect to such Financed Property; and

(xi) evidence that such Financed Property is not a Flood Hazard Property; and

(xii) with respect to the applicable Borrower associated with such Financed Property (to the extent not previously delivered):

(A) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of such Borrower as the Lender may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with the Loan Documents to which such Borrower is a party;

(B) such documents and certifications as the Lender may reasonably require (x) to evidence that each Loan Party is duly organized or formed, and (y) to evidence that such Borrower is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to

the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(C) a certificate of a Responsible Officer of such Borrower either (A) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Borrower and the validity against such Borrower of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required; and

(D) a certificate signed by the chief financial officer, treasurer or chief accounting officer of the Company, certifying that the Company individually is Solvent and the Loan Parties taken as a whole are Solvent, in each case after giving effect to the Collateral Substitution and the other Loan Documents and the Indebtedness pursuant hereto and thereto.

(e) The applicable Borrower associated with such Financed Property must be a Borrower as of the Closing Date or pursuant to Section 6.05.

(f) With respect to each Collateral Substitution, (i) the Lender shall have received a \$7,500.00 collateral substitution fee and (ii) the Lender shall have determined that no Environmental Issue exists with respect to any Financed Property that is added to the Collateral Pool by such Collateral Substitution.

(g) Any fees required to be paid on or before the date of the applicable Borrowing or Collateral Substitution shall have been paid.

Each Loan Notice (other than a Loan Notice requesting only a conversion of Loans to the other Type) submitted by the Company and each Collateral Substitution shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Borrowing or Collateral Substitution.

The Company and the Borrowers, jointly and severally, shall pay to the Lender any collateral substitution fees required by this Section 4.02.

## **ARTICLE V. REPRESENTATIONS AND WARRANTIES**

The Company and each Borrower represents and warrants to the Lender that:

### **5.01 Existence, Qualification and Power**

. Each Loan Party and each Subsidiary thereof (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or

(c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

#### **5.02 Authorization; No Contravention**

. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries, or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law; except, in the case of clause (b)(i) or (c), to the extent such contravention, conflict or violation would not reasonably be expected to have Material Adverse Effect.

#### **5.03 Governmental Authorization; Other Consents**

. No registration with, or consent or approval of, or other action by, any federal, state or other Governmental Authority is or will be required in connection with the execution, delivery and performance of this Agreement or any other Loan Document, the execution and delivery of the Master Note or repayment of the Borrowings hereunder.

#### **5.04 Binding Effect**

. This Agreement and each of the Loan Documents have been duly executed and delivered by each Loan Party which is a party thereto and constitute legal, valid and binding obligations of each Loan Party thereto enforceable in accordance with their respective terms, subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium and similar Laws affecting creditors' rights generally and general principles of equity.

#### **5.05 Financial Statements; No Material Adverse Effect.**

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (ii) fairly present in all material respects the financial condition of the Company and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein.

(b) The unaudited consolidated and consolidating balance sheets of the Company and its Subsidiaries dated June 30, 2018, and the related consolidated and consolidating statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of the Company and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

#### **5.06 Litigation**

. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Company after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against the Company or any of its Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) except as specifically disclosed in Schedule 5.06, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

#### **5.07 No Default**

. Neither any Loan Party nor any Subsidiary thereof is in default under or with respect to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

#### **5.08 Ownership of Property; Liens**

. Except as specifically disclosed in Schedule 5.08 (a) each of the Company and each Subsidiary has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, and (b) each of the Company and each Subsidiary owns all property necessary in the operation of its business, except in each case for such defects in title or such failure to own or lease property as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The property of the Company and its Subsidiaries is subject to no Liens, other than Permitted Liens.

#### **5.09 Environmental Compliance**

. The Company and each of its Subsidiaries has complied in all respects with all Environmental Laws except where the failure to comply could not be expected to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries has received written notice of any failure so to comply except where the failure to comply could not be expected to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries manages any hazardous wastes, hazardous substances, hazardous materials, toxic substances or toxic pollutants in a manner that violates any regulations promulgated pursuant to Environmental Laws except for any such violation that could not be expected to have a Material Adverse Effect.

#### **5.10 Insurance**

. The properties of the Company and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Company, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Company or the applicable Subsidiary operates.

## 5.11 Taxes

. The Company and its Subsidiaries have filed all Federal, state and other material tax returns required to be filed, and have paid, or have made adequate provision for payment of, all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves or other appropriate provisions have been provided in accordance with GAAP. There is no proposed tax assessment against the Company or any Subsidiary that would, if made, have a Material Adverse Effect.

## 5.12 ERISA Compliance.

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state laws. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service or, in the case of a Pension Plan that is maintained pursuant to the adoption of a master or prototype or volume submitter document, the sponsor of such master or prototype or volume submitter document has obtained from the Internal Revenue Service a favorable opinion letter stating that the form of such master or prototype or volume submitter document is acceptable for the establishment of a tax-qualified plan under Section 401(a) of the Code. To the best knowledge of the Company, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the best knowledge of the Company, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) No ERISA Event has occurred that would reasonably be expected to result in a material liability, and neither the Company nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA event that would result in a material liability. Except to the extent the following would not reasonably be expected to have a Material Adverse Effect, (i) the Company and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (ii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher and neither the Company nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date; (iii) neither the Company nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (iv) neither the Company nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (v) no Pension Plan has been terminated by the plan administrator thereof

nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

(d) Neither the Company nor any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan other than (A) on the Closing Date, those listed on Schedule 5.12(d) hereto and (B) thereafter, Pension Plans not otherwise prohibited by this Agreement.

(e) Each Borrower represents and warrants as of the Closing Date that such Borrower is not and will not be using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans or the Commitments.

### **5.13 Loan Party Information; Subsidiaries; Addresses; Equity Interests**

. As of the Closing Date, the Company has no Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13, and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and nonassessable and are owned by a Loan Party in the percentages specified on Part (a) of Schedule 5.13 free and clear of all Liens (except for Liens permitted by Section 7.02(a), (c) or (d) of the Syndicated Credit Agreement, and transfer restrictions contained in the Franchise Agreements and the Framework Agreements). As of the Closing Date, the addresses set forth in Schedule 5.13 are each Loan Party’s place of business, name, type or organization, state organization number, jurisdiction of organization and each Loan Party is formed or incorporated only in the state shown for it on Schedule 5.13 hereto. Each of the Company and each Borrower shall, and shall cause each other Loan Party to, promptly (but in any event within five (5) Business Days) report to the Lender any change in any such Person’s name, type of organization, state organization number, jurisdiction of organization or federal employers identification number.

### **5.14 Margin Regulations; Investment Company Act.**

(a) Neither the Company nor any Borrower is engaged or will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) None of the Company, any Person Controlling the Company, or any Subsidiary is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

### **5.15 Disclosure**

. Neither this Agreement, the other Loan Documents, nor any other document delivered by or with the knowledge and consent of the Company on behalf of the Company or any Subsidiary in connection with the transactions contemplated hereby and the negotiation of this Agreement or in connection with any Loan Document or included therein contained or contains any material misstatement of fact or omitted or omits to state any fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; provided that, with respect to projected financial information, the Company and the Borrowers

represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time prepared, it being understood that projections by their nature are uncertain and no assurance is given that the results reflected in such projections will be achieved.

#### **5.16 Compliance with Laws**

. Each of the Company and each Subsidiary thereof is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

#### **5.17 Intellectual Property; Licenses, Etc**

. The Company and its Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, "IP Rights") that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person, except to the extent such conflict would not reasonably be expected to result in a Material Adverse Effect. No slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by the Company or any Subsidiary infringes upon any rights held by any other Person in a manner that would reasonably be expected to result in a Material Adverse Effect.

#### **5.18 Books and Records**

. Each of the Company and each Subsidiary maintains proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied have been made of all financial transactions and matters involving the assets and business of the Company or such Subsidiary, as the case may be.

#### **5.19 Franchise Agreements and Framework Agreements**

. As of the Closing Date, neither the Company nor any of its Subsidiaries is a party to any dealer Franchise Agreements, or any Framework Agreements, other than those listed in Schedule 5.19, which schedule shows the manufacturer and the Loan Party which is a party to each such agreement. Each of the Franchise Agreements and Framework Agreements is currently in full force and effect, and as of the Closing Date no Loan Party has received any notice of termination with respect to any such agreements; and, except as disclosed on Schedule 5.19, no Loan Party is aware of any event which with notice, lapse of time, or both would allow any manufacturer which is a party to any of the Franchise Agreements or Framework Agreements to terminate any such agreements. There exists no present condition or state of facts or circumstances in regard to said Franchise Agreements or Framework Agreements, in the aggregate, which could reasonably be expected to have a Material Adverse Effect.

#### **5.20 Engaged in Business of Vehicle Sales and Related Businesses**

. Neither the Company nor any Borrower is engaged in any business other than (a) in the case of each Borrower, the business of owning and operating the applicable Financed Property and

business ancillary thereto and (b) in the case of the Company and each Borrower which is a dealership, the business of (i) selling Vehicles and related activities and (ii) acquiring, owning, operating and, in some cases, selling dealerships engaged in such businesses.

#### **5.21 Collateral**

. The provisions of each of the Security Instruments are effective to create in favor of the Lender, a legal, valid and enforceable perfected security interest in all right, title and interest of each applicable Loan Party in the Collateral described therein, except as otherwise permitted hereunder.

#### **5.22 Solvency**

. Both before and after giving effect to the Loans hereunder, the Company individually is Solvent, and the Loan Parties taken as a whole are Solvent.

#### **5.23 Labor Matters**

. As of the Closing Date, to the Company's and its Subsidiaries' knowledge, there are no material labor disputes to which the Company or any of its Subsidiaries are or are reasonably expected to become a party, including, without limitation, any strikes, lockouts or other disputes relating to such Persons' plants and other facilities.

#### **5.24 Taxpayer Identification Number**

. The Company's true and correct U.S. taxpayer identification number is set forth on Schedule 9.02.

#### **5.25 OFAC**

. No Borrower, nor any of their respective Subsidiaries, nor, to the knowledge of any Borrower and their respective Subsidiaries, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity currently the subject of any Sanctions or included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority, nor is any Borrower or any Subsidiary located, organized or resident in a Designated Jurisdiction.

#### **5.26 Anti-Corruption Laws**

. Each Borrower and its Subsidiaries have conducted their businesses in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977 and other similar anti-corruption legislation in other jurisdictions that are applicable to any Borrower or its Subsidiaries (including, if applicable, the UK Bribery Act 2010), and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

#### **5.27 Leases**

. There is a Lease in force for each Financed Property listed on Schedule 5.27, each Lease is in full force and effect without amendment or modification from the form or copy delivered to the



Lender except for amendments permitted hereunder; no default by any party exists under any such Lease that could result in termination of such Lease, nor has any event occurred which, with the passage of time or the giving of notice, or both, would constitute such a default under any such Lease. Schedule 5.27 is a complete and correct listing of all Leases as of the Closing Date.

#### **5.28 Beneficial Ownership**

. As of the date that any Beneficial Ownership Certification is delivered to Lender pursuant to Section 6.11, the information included in such Beneficial Ownership Certification delivered to the Lender is true and correct in all respects.

#### **5.29 Covered Entities**

. No Loan Party is a Covered Entity.

### **ARTICLE VI. AFFIRMATIVE COVENANTS**

The Company and the Borrowers covenant that, so long as the Lender shall have a Commitment hereunder or any Loan or other Obligation shall remain unpaid or outstanding, the covenants and agreements applicable to the Company and its Subsidiaries which are contained in Sections 6.01, 6.02 and 6.03 of the Syndicated Credit Agreement (including all related exhibits, schedules and defined terms referred to therein) are hereby (or, in the case of each Subsequent Provision, shall, upon its effectiveness, be) incorporated herein by reference as if set forth in full herein, mutatis mutandis; and the Company and each Borrower shall comply, and shall cause their respective Subsidiaries to comply, with such incorporated covenants and agreements.

The Company and the Borrowers further covenant that, so long as the Lender shall have a Commitment hereunder or any Loan or other Obligation shall remain unpaid or unsatisfied, all covenants and agreements (other than the covenants and agreements specified in the immediately preceding paragraph and those covenants and agreements set forth in Sections 6.05, 6.07, 6.10, 6.11, 6.12, 6.13, 6.14, 6.16, and 6.17 of the Syndicated Credit Agreement) set forth in Article VI of the Syndicated Credit Agreement (including all related exhibits, schedules and defined terms referred to therein) are hereby (or, in the case of each Subsequent Provision, shall, upon its effectiveness, be) incorporated herein by reference as if set forth in full herein, mutatis mutandis, but only to the extent as they apply to the Company or any other Loan Party; and the Company and each Borrower shall comply, and cause each other Loan Party to comply, with the covenants and agreements incorporated by reference pursuant to this sentence.

So long as the Lender shall have a Commitment hereunder or any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, the Company and each other Borrower shall, and shall cause each Loan Party to:

## **6.01 Notices**

. Promptly notify the Lender:

(a) of the occurrence of any Default;

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including any report, study, inspection or test that indicates the presence of any Hazardous Materials on or about any Financed Property or any adverse condition relating to any Financed Property, any buildings or any such materials which presence or adverse condition could reasonably be expected to have a Material Adverse Effect;

(c) of (i) any Lease (and deliver to the Lender a copy of such Lease) entered into after the Closing Date, (ii) any amendment or other modification (and deliver to the Lender a copy of such amendment or modification) of any Lease, (iii) the termination or expiration of any Lease and (iv) any material adverse change in the relationship between the applicable Borrower and any lessee under any Lease;

Each notice pursuant to this Section 6.01 shall be accompanied by a statement of a Responsible Officer of the Company setting forth details of the occurrence referred to therein and stating what action the Company or the applicable Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.01(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

## **6.02 Maintenance of Insurance.**

(a) Maintain, on a consolidated basis, insurance to such extent and against such hazards and liabilities as is commonly maintained by companies similarly situated (and in any event each Borrower will maintain such insurance). In addition to the insurance referred to above, with respect to each Mortgaged Property, each Borrower will maintain the following policies:

(i) Prior to construction of any improvements on any Mortgaged Property, an “all-risk”, completed value, non-reporting builder’s risk insurance policy or policies that provide coverage similar to the foregoing must be submitted to the Lender, unless such construction is covered by a policy already provided to the Lender. This policy must be from a company and in an amount satisfactory to the Lender, must have a vandalism and malicious mischief endorsement and must be sufficient to avoid the application of any co-insurance provisions, must include provisions for a minimum 30-day advance written notice of any intended policy cancellation or non-renewal, and must designate the Lender as mortgagee and loss payee in a standard mortgagee endorsement with the following address:

Bank of America, N.A.  
NC4-105-02-17  
4161 Piedmont Parkway  
Greensboro NC 27410  
Attn: Monitoring and Compliance

(ii) Each Borrower covenants to maintain or cause to be maintained, by such Borrower and, during the construction of any improvements on any Mortgaged Property, the general contractor, general accident and public liability insurance against all claims for bodily injury, death or property damage occurring upon, in or about any part of such Mortgaged Property. The policies must be from companies and in amounts satisfactory to the Lender. The contractor's policy must include worker's compensation coverage in an amount sufficient to satisfy statutory requirements;

(iii) An "all-risk" property insurance policy must be in effect, and an original certificate from the issuing insurance company evidencing that the policy is in full force and effect must be submitted to the Lender; provided that such insurance shall include coverage for earthquakes and against wind damage on such terms as the Lender may reasonably require. The policy must be from a company satisfactory to the Lender, must be in an amount satisfactory to the Lender, must eliminate all co-insurance provisions, must include a Replacement Cost and Agreed Amount/Stipulated Value Endorsement (or policy provisions providing similar coverage), must include provisions for a minimum 30-day advance written notice to the Lender of any intended policy cancellation or non-renewal, and must designate the Lender as mortgagee and loss payee in a standard mortgagee endorsement, as its interest may appear;

(iv) If, and to the extent that, any Mortgaged Property is or becomes a Flood Hazard Property, the Company shall carry flood insurance with respect to such Mortgaged Property in an amount not less than the maximum amount available under the Flood Disaster Protection Act of 1973 and the regulations issued pursuant thereto, as amended from time to time, in form complying with the "insurance purchase" requirement of that act;

(v) Each such liability insurance policy shall name the Lender as an additional insured party with respect to such Mortgaged Property, and each such casualty insurance policy shall name the Lender as a loss payee, and shall provide by way of endorsements, riders or otherwise that (i) proceeds will be payable to the Lender as its interest may appear; (ii) such insurance policy shall be renewed, if renewal is available, and shall not be canceled and further, shall not be endorsed, altered or reissued to effect a change in coverage in any manner materially adverse to the Lender, for any reason and to any extent whatsoever unless such insurer shall have first given the Lender thirty (30) days' prior written notice thereof; (iii) such insurance policy shall not be impaired by any act or neglect of any Borrower or any use of such Mortgaged Property for purposes more hazardous than are permitted by such policy; and (iv) the Lender may, but shall not be obliged to, make premium payments to prevent any nonrenewal, cancellation, endorsement, alteration or reissuance and such payments shall be accepted by the insurer to prevent same;

(vi) The Lender shall be furnished with the original of each such initial policy (or a binder for the issuance of such policy) or a certificate with a duplicate of such

original policy (or binder) coincident with the execution of the Mortgage related to such Mortgaged Property and satisfactory evidence of renewal thereof upon expiration of the initial or each preceding renewal policy (provided that the coverage required hereunder remains in effect at all times), together with receipts or other evidence that the premiums thereon have been paid within thirty (30) days following the billing for such renewal, with the original of each renewal policy or a certificate with a duplicate of such renewal policy to follow as soon as available or, in any such case, an appropriate broker's certificate in respect thereto. Upon request by the Lender, each Borrower shall furnish to the Lender a statement certified by such Borrower or a duly authorized officer of such Borrower of the amounts of insurance maintained in compliance with this Section 6.02, a general description of the risks covered by such insurance and of the insurance company or companies which carry such insurance. In addition, each Borrower will promptly comply with any and all requirements of any insurer of any portion of any Mortgaged Property and any and all rules and regulations of any insurance commission or board of fire underwriters having jurisdiction over such Mortgaged Property; and

(vii) Without limiting any of the other provisions of this Section 6.02, all losses under, and the proceeds payable under, any policies of insurance that any Borrower may elect to obtain, whether or not required hereunder, which insure, cover or relate to any Mortgaged Property, or any portion thereof, shall be applied in the same manner and to the same extent as provided herein with respect to any insurance required to be carried by such Borrower.

(b) Unless the Company or a Borrower provides the Lender with evidence of the insurance coverage as required by this Agreement or any other Loan Document, the Lender (at its discretion) may purchase insurance at the Company's and the Borrowers' expense to protect the Lender's interest. This insurance may, but need not, also protect the Company's and the Borrowers' interest. If the Collateral becomes damaged, the coverage the Lender purchases may not pay any claim the Company, any Borrower or any of their Subsidiaries makes or any claim made against the Company, any Borrower or any of their Subsidiaries. The Company or a Borrower, as applicable, may later cancel this coverage by providing evidence that the Company or such Borrower, as applicable, has obtained property coverage elsewhere.

(c) The Company and the Borrowers (jointly and severally) are responsible for the cost of any insurance purchased by the Lender. The cost of this insurance may be added to the Obligations. If the cost is added to the Obligations, the interest rate provided in Section 2.05(b)(i) shall apply to such added amount. The effective date of coverage may be the date the Company's or the applicable Borrower's prior coverage lapsed or the date the Company or the applicable Borrower failed to provide proof of coverage.

(d) Each of the Company and each Borrower acknowledges that the coverage the Lender purchases may be considerably more expensive than insurance the Company or such Borrower can obtain on its own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

### **6.03 Inspection Rights**

. Permit representatives and independent contractors of the Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers,

and independent public accountants, all at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Company; provided, however, that (a) without limiting any expense amounts that may be owned under the Syndicated Credit Agreement or any documents relating thereto, while no Event of Default exists the Borrowers shall be responsible for expenses associated with only one such visit or inspection by the Lender and its contractors per calendar year, and (b) when an Event of Default exists the Lender (or any of its respective representatives or independent contractors) may do any of the foregoing at any time or times (all at the expense of the Borrowers) during normal business hours and without advance notice.

#### **6.04 Use of Proceeds**

. The Borrowers shall use the proceeds of the Loans for general working capital, capital expenditures and other lawful purposes of the Company (including, without limitation, the repayment of Indebtedness). No Loans shall be used for any purpose which would be in contravention of any requirement of Law.

#### **6.05 Additional Subsidiaries**

. (a) As soon as practicable (but in any event within ten (10) days or such longer period as the Lender may agree in its sole discretion) after the acquisition or creation of any Subsidiary which is or will be a lessee of Financed Property or the designation of any existing Subsidiary as a lessee of Financed Property or (b) prior to or simultaneously with any Collateral Substitution, in the event any Subsidiary which owns real property proposed to be Financed Property in connection with such Collateral Substitution is not an existing Borrower (or any Subsidiary which leases such property, Subsidiary Guarantor, as the case may be), cause to be delivered to the Lender (in addition to any other documents required to be delivered under this Agreement, including pursuant to Section 4.02 or otherwise) each of the following:

(a) a Joinder Agreement duly executed by such Subsidiary with all schedules and information thereto appropriately completed with respect to such Subsidiary becoming a “Borrower” or a “Subsidiary Guarantor”, as applicable;

(b) in the case of any such Subsidiary becoming a “Borrower”, UCC financing statements naming such Subsidiary as “Debtor” and naming the Lender as “Secured Party,” in form, substance and number sufficient in the reasonable opinion of the Lender and its counsel to be filed in all UCC filing offices in which filing is necessary or advisable to perfect in favor of the Lender the Liens on the Collateral conferred under such Joinder Agreement and other Security Instruments to the extent such Lien may be perfected by UCC filings;

(c) an opinion or opinions of counsel to such Subsidiary dated as of the date of delivery of such Joinder Agreements (and other Loan Documents) provided for in this Section 6.05 and addressed to the Lender, in form and substance acceptable to the Lender;

(d) the documents described in Sections 4.01(a)(iii), (iv), (vii), (xi), (xiii) and (xv) with respect to such Subsidiary; and

(e) evidence satisfactory to the Lender that all taxes, filing fees, recording fees related to the perfection of the Liens securing the Obligations have been paid and all reasonable costs and expenses of the Lender in connection therewith have been paid.

#### **6.06 Preservation of Existence, Etc.**

. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.03 or 7.04 of the Syndicated Credit Agreement; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

#### **6.07 Further Assurances**

. Each of the Company and the Borrowers shall, and shall cause each of the Loan Parties to, to the extent applicable, execute, acknowledge, deliver, and record or file such further instruments, including, without limitation, further security agreements, financing statements, and continuation statements, and do such further acts as may be reasonably necessary, desirable, or proper to carry out more effectively the purposes of this Agreement, and to protect the Liens granted in this Agreement or the Loan Documents to which any of them respectively is a party and against the rights or interests of third persons, and the Company and the Borrowers (jointly and severally) will pay all reasonable costs connected with any of the foregoing.

#### **6.08 Leases**

. At all times, comply in all material respects with the terms and provisions of the Leases of the Financed Properties, and cause such Leases to be kept in full force and effect without termination, amendment or modification, except for (i) any modification or amendment of a Lease made in the ordinary course of business consistent with past practices of the Loan Parties, and which amendment or modification is not materially adverse to the Loan Parties or the Lender or (ii) renewals or extensions (A) on either substantially the same terms as the existing Lease of a Financed Property, or (B) as otherwise approved by the Lender in writing.

#### **6.09 Syndicated Credit Agreement**

. On or after the date of any Removal Event, all certificates or notices required to be delivered to under Section 6.01, 6.02 or 6.03 of the Syndicated Credit Agreement shall be delivered to Lender hereunder.

#### **6.10 Anti-Corruption Laws**

. Conduct its businesses in material compliance with the United States Foreign Corrupt Practices Act of 1977 and other similar anti-corruption legislation in other jurisdictions that are applicable to any Borrower or its Subsidiaries (including, if applicable, the UK Bribery Act 2010), and maintain policies and procedures designed to promote and achieve compliance with such laws.

#### **6.11 Patriot Act and Beneficial Ownership Regulation**

. Promptly following any request therefor, information and documentation reasonably requested by the Lender for purposes of compliance with applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act and the Beneficial Ownership

Regulation. Without limiting the generality of the foregoing, promptly following any request therefor made by the Lender at any time, the Borrowers shall deliver to the Lender a Beneficial Ownership Certification with respect to any Borrower or other Loan Party identified by the Lender in such request.

#### **6.12 Use of Financed Properties as Vehicle Dealerships**

. Ensure that each Financed Property is at all times either (a) used (or under development for use) by a Borrower as a Vehicle dealership, (b) used (or under development for use) by a Borrower as a facility for the sale, repair, service or storage of Vehicles or the provision of related goods or services, (c) used by a Borrower for any purpose ancillary to the uses described in clause (a) or (b), or (d) raw land; except that (Y) the portion of the Marietta/2086 Cobb Financed Property currently sub-leased through 2021 to the Marietta/2086 Cobb Restaurant Lessee for use as a restaurant may continue to be used for such purpose through 2021 and (Z) the portion of the Marietta/2086 Cobb Financed Property currently sub-leased to the Marietta/2086 Cobb Cell Tower Lessee for use as the site of a cell tower may continue to be used for such purpose.

### **ARTICLE VII. NEGATIVE COVENANTS**

The Company and the Borrowers covenant that, so long as the Lender shall have a Commitment hereunder or any Loan or other Obligation shall remain unpaid or outstanding, the covenants and agreements applicable to the Company and its Subsidiaries which are contained in Sections 7.01, 7.04, 7.05, 7.07, 7.08, 7.10, 7.11, 7.14, 7.16 and 7.19 of the Syndicated Credit Agreement (including all related exhibits, schedules and defined terms referred to therein) are hereby (or, in the case of each Subsequent Provision, shall, upon its effectiveness, be) incorporated herein by reference as if set forth in full herein, mutatis mutandis; and the Company and each Borrower shall comply, and shall cause their respective Subsidiaries to comply, with such incorporated covenants and agreements.

The Company and the Borrowers further covenant that, so long as the Lender shall have a Commitment hereunder or any Loan or other Obligation shall remain unpaid or unsatisfied, all covenants and agreements (other than the covenants and agreements specified in the immediately preceding paragraph and those covenants and agreements set forth in Sections 7.13, 7.17, 7.21 and 7.22 of the Syndicated Credit Agreement) set forth in Article VII of the Syndicated Credit Agreement (including all related exhibits, schedules and defined terms referred to therein) are hereby (or, in the case of each Subsequent Provision, shall, upon its effectiveness, be) incorporated herein by reference as if set forth in full herein, mutatis mutandis, but only to the extent as they apply to the Company or any other Loan Party; and the Company and each Borrower shall comply, and cause each other Loan Party to comply, with the covenants and agreements incorporated by reference pursuant to this sentence.

So long as the Lender shall have any Commitment hereunder or any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, neither the Company nor any other Loan Party shall, nor shall it permit any Borrower to, directly or indirectly:

#### **7.01 Use of Proceeds**

. Use the proceeds of any Loan, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation

U) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

#### **7.02 Amendments of Certain Indebtedness**

. Amend, modify or change in any manner, any term or condition of any Subordinated Indenture Indebtedness or any refinancing of any Subordinated Indenture Indebtedness so that the terms and conditions thereof are less favorable in all material respects to the Lender than the terms and conditions of the relevant Subordinated Indenture Indebtedness as of the later of the Closing Date or the date of incurrence thereof; provided that the Company may enter into supplements to the Indenture (as required by the terms of the Indenture) if the sole effect of such supplements is to add additional guarantors of the Subordinated Indenture Indebtedness.

#### **7.03 Dispositions**

. Permit any Subsidiary to, permit any Disposition (whether in one or a series of transactions) of any Financed Property or any portion of any Financed Property, or enter into any agreement so to do, except Permitted Financed Property Dispositions.

#### **7.04 Amendments of Organizational Documents**

. Amend its Organizational Documents in a manner that could reasonably be expect to (a) impair the enforceability of any Loan Document in any material respect or the perfection or priority of any Lien created thereunder, (b) impair in any material respect its ability to perform its obligations under the Loan Documents or (c) otherwise have a Material Adverse Effect.

#### **7.05 Sanctions**

. Directly or indirectly, use the proceeds of any Loan, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other individual or entity, to fund any activities of or business with any individual or entity, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any individual or entity (including any individual or entity participating in the transaction) of Sanctions.

#### **7.06 Leases**

. Permit any Person to occupy, lease or sublease any Financed Property except for (i) the current Lease of a portion of the Marietta/2086 Cobb Financed Property to the Marietta/2086 Cobb Restaurant Lessee, (ii) the Lease of a portion of the Marietta/2086 Cobb Financed Property to the Marietta/2086 Cobb Cell Tower Lessee, provided (in the case of this clause (ii)) that the Company has used commercially reasonable efforts to obtain a subordination and attornment agreement reasonably acceptable to the Lender from such lessee, and (iii) a Lease of a Financed Property to a Subsidiary that has executed and delivered to the Lender a Subordination and Attornment agreement in substantially the form of Exhibit E (each a “Subordination and Attornment Agreement”) and has joined the Subsidiary Guaranty and provided to the Lender the documents required by Section 6.05.

#### **7.07 Collateral**



. Permit to exist any Lien or security interest on the Collateral other than (i) the Liens and security interests of the Lender and (b) Mortgage Permitted Liens.

#### **7.08 Anti-Corruption Laws**

. Directly or indirectly use the proceeds of any Loan for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anti-corruption legislation in other jurisdictions.

#### **7.09 Use of Financed Properties**

. Use any Financed Property for any purpose except for uses expressly permitted by Section 6.12.

### **ARTICLE VIII. EVENTS OF DEFAULT AND REMEDIES**

#### **8.01 Events of Default**

. Any of the following shall constitute an Event of Default:

(a) Non-Payment. Any Borrower or any other Loan Party fails to pay (i) any principal of any Loan when and as the same shall become due and payable pursuant to the terms of this Agreement, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise, or (ii) within five (5) days after the same becomes due, any interest on any Loan or any other amount due under this Agreement (other than principal of any Loan) when and as the same shall become due and payable; or

(b) Specific Covenants. The Company or any Borrower fails to perform or observe any term, covenant or agreement contained in any of (x) Section 6.01, 6.02(a) or (b), 6.03, or 6.05 (as it relates to maintenance of existence), of the Syndicated Credit Agreement as incorporated by reference in Article VI, (y) Section 6.01, 6.03, 6.04 or 6.05 or Article VII (including any covenant or agreement incorporated into Article VII by reference); or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after the giving of written notice to such Loan Party specifying the alleged default; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Company or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default. (i) The Company or any Subsidiary (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts and Indebtedness under the Syndicated Credit Agreement) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or

condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which the Company or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which the Company or any Subsidiary is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by the Company or such Subsidiary as a result thereof is greater than the Threshold Amount; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any of its Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) The Company or any Subsidiary becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within thirty (30) days after its issue or levy; or

(h) Judgments. There shall be entered against the Company or any of its Subsidiaries (i) one or more judgments or decrees in excess of the Threshold Amount in the aggregate at any one time outstanding for the Company and all its Subsidiaries or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 60 consecutive days during which such judgment is not satisfied and a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect, excluding (in the case of clause (i)) those judgments or decrees for which and to the extent that the Company or any such Subsidiary is insured and with respect to which the insurer has not contested or denied responsibility in writing (subject to usual deductibles); or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan, Multiemployer Plan or Multiple Employer Plan which has resulted or could reasonably be expected to result in liability of the Company under Title IV of ERISA to the Pension Plan, Multiemployer Plan, Multiple Employer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) the Company or any ERISA Affiliate fails to pay when due, after

the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents. (i) Any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or (ii) any Security Instrument shall for any reason (other than pursuant to the terms thereof or as a result of the failure of the Lender to file UCC financing statements or UCC continuation statements) cease to create a valid security interest in the Collateral purported to be covered thereby or such security interest shall for any reason cease to be a perfected security interest with the priority provided therefor in such Security Instrument subject only to Mortgage Permitted Liens;

(k) Change of Control. There occurs any Change of Control;

(l) Default Under Syndicated Credit Agreement. Any “Event of Default” specified in the Syndicated Credit Agreement exists, after giving effect to any waiver or amendment thereof under the Syndicated Credit Agreement (it being agreed that each such “Event of Default” shall survive any termination, cancellation, discharge or replacement of the Syndicated Credit Agreement); or

(m) Default Under 2013 Real Estate Credit Agreement. Any “Event of Default” specified in the 2013 Real Estate Credit Agreement exists, after giving effect to any waiver or amendment thereof under the 2013 Real Estate Credit Agreement (it being agreed that each such “Event of Default” shall survive any termination, cancellation, discharge or replacement of the 2013 Real Estate Credit Agreement).

## **8.02 Remedies Upon Event of Default**

. If any Event of Default occurs and is continuing, the Lender may take any or all of the following actions:

(a) declare the Commitment of the Lender to make Loans to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document with respect to the Loans to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Company and each Borrower;

(c) exercise all rights and remedies available to the Lender under the Loan Documents;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to any Borrower under the Bankruptcy Code of the United States, the obligation of the Lender to make Loans shall automatically terminate and the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable without further act of the Lender.

### **8.03 Application of Funds**

. After the exercise of remedies provided for in this Article VIII (or after the Loans have automatically become immediately due and payable), any amounts received on account of the Obligations shall be applied by the Lender in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Lender and amounts payable under Article III) payable to the Lender;

Second, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and other Obligations (other than in respect of Swap Contracts);

Third, on a pari passu basis, to payment of that portion of (a) the Obligations constituting unpaid principal of the Loans and (b) that portion of the Obligations constituting Obligations then owing under Secured Hedge Agreements, ratably among the Hedge Banks in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to the payment of all other Obligations of the Loan Parties owing under or in respect of the Loan Documents that are due and payable to the Lender on such date; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Company or as otherwise required by Law;

provided that, Excluded Swap Obligations with respect to any Loan Party shall not be paid with amounts received from such Loan Party or its assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Obligations otherwise set forth above in this Section.

Notwithstanding the foregoing, Obligations arising under Secured Hedge Agreements shall be excluded from the application described above if the Lender has not received written notice thereof, together with such supporting documentation as the Lender may request, from the applicable Hedge Bank. Excluded Swap Obligations with respect to any Loan Party shall not be paid with amounts received from such Loan Party, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Obligations otherwise set forth above in this Section.

## **ARTICLE IX. MISCELLANEOUS**

### **9.01 Amendments, Etc**

. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Company or any other Loan Party therefrom, shall be effective unless in writing signed by the Lender and the Company or the applicable Loan Party, as the case may be, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

### **9.02 Notices; Effectiveness; Electronic Communication.**

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier or other electronic mail transmission to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 9.02 and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. The Lender or the Company may each, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Lender otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Change of Address, Etc. Each of the Company and the Lender may change its address, facsimile number or telephone number or electronic mail address for notices and other communications hereunder by notice to the other parties hereto.

(d) Reliance by Lender. The Lender shall be entitled to rely and act upon any notices (including telephonic or electronic Loan Notices) purportedly given by or on behalf of the Company or any Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Company and each Borrower shall indemnify the Lender and its Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Company or any Borrower. All telephonic notices to and other telephonic communications with the Lender may be recorded by the Lender, and each of the parties hereto hereby consents to such recording.

### **9.03 No Waiver; Cumulative Remedies; Enforcement**

. No failure by the Lender, to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

#### **9.04 Expenses; Indemnity; Damage Waiver.**

(a) Costs and Expenses. The Company and each Borrower (jointly and severally) shall pay (i) all reasonable out-of-pocket expenses incurred by the Lender and its Affiliates (including, but not limited to, the reasonable fees, charges and disbursements of one law firm acting as outside counsel for the Lender and one law firm acting as local counsel in each jurisdiction where necessary, the costs of appraisals, environmental reports and reviews thereof, title work, recording fees, recording taxes and the costs of any other Real Estate Support Documents), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all reasonable out-of-pocket expenses incurred by the Lender (including the fees, charges and disbursements of any counsel for the Lender), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made hereunder, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) Indemnification by the Borrowers. The Company and each Borrower (jointly and severally) shall indemnify the Lender and each Related Party of the Lender (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (but limited, in the case of legal fees and expenses, to the reasonable and documented fees, disbursements and other charges of (i) one counsel for the Lender, and (ii) one local counsel in each relevant jurisdiction), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Company or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Company, any Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Company, any Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Company or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee, (y) result from a

claim brought by the Company or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Company or such other Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (z) arise out of a dispute solely between or among Indemnities that does not involve an act or omission by any Loan Party or any Loan Party's Affiliates other than any action, suit, proceeding or claim against any Indemnitee or any of its Related Parties in its capacity or in fulfilling its role as an agent or similar role under hereunder or under any other Loan Document. Without limiting the provisions of Section 3.01(c), this Section 9.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, neither the Company nor any Borrower shall assert, and each of the Company and each Borrower hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(d) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(e) Survival. The agreements in this Section and the indemnity provisions of Section 9.02(e) shall survive the termination of the Commitment and the repayment, satisfaction or discharge of all the other Obligations.

#### **9.05 Payments Set Aside**

. To the extent that any payment by or on behalf of the Company or any Borrower is made to the Lender, or the Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

#### **9.06 Successors and Assigns.**

(a) Successors and Assigns Generally. This Agreement and the other Loan Documents shall be binding on and shall inure to the benefit of the parties hereto and thereto and their respective successors and assigns permitted hereby, except that neither the Company nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder

without the Lender's prior written consent. The Lender may at any time (i) assign all or any part of its rights and obligations hereunder to any other Person, and (ii) grant to any other Person participating interests in all or part of its rights and obligations hereunder, provided, however, the consent of the Company (such consent not to be unreasonably withheld) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to an Affiliate of a Lender or an Approved Fund; provided further that the Company shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Lender within ten (10) Business Days after having received notice thereof. The Company and each Borrower agrees to execute any documents reasonably requested by the Lender in connection with any such assignment. All information provided by or on behalf of the Company or any Borrower to the Lender or its Affiliates may be furnished by the Lender to its Affiliates and to any actual or proposed assignee or participant.

(b) Certain Pledges. The Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under the Master Note) to secure obligations of the Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release the Lender from any of its obligations hereunder or substitute any such pledgee or assignee for the Lender as a party hereto.

#### **9.07 Treatment of Certain Information; Confidentiality**

. The Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, trustees, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or participant in, or any prospective assignee of or participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Company or any Borrower and its obligations, (g) on a confidential basis to (i) any rating agency in connection with rating the Company or its Subsidiaries or the credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (h) with the consent of the Company or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Lender or any of its Affiliates on a nonconfidential basis from a source other than the Company. For purposes of this Section, "Information" means all information received from the Company or any Subsidiary relating to Company or any Subsidiary or any of its respective businesses, other than any such information that is available to the Lender on a nonconfidential basis prior to disclosure by the Company or any Subsidiary, provided that, in the case of information received from the Company or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of



Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

The Lender acknowledges that (a) the Information may include material non-public information concerning the Company or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

#### **9.08 Right of Setoff**

. If an Event of Default shall have occurred and be continuing, the Lender and its respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by the Lender, or any such Affiliate to or for the credit or the account of the Company or any Loan Party against any and all of the obligations of the Company or any Loan Party, as applicable, now or hereafter existing under this Agreement or any other Loan Document to the Lender or its Affiliates, irrespective of whether or not the Lender or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Company or such Loan Party may be contingent or unmatured, or are owed to a branch, office or Affiliate of the Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; The rights of the Lender, and its Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that the Lender, or its Affiliates may have. The Lender agrees to notify the Company promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

#### **9.09 Interest Rate Limitation**

. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Company or the Borrowers. In determining whether the interest contracted for, charged, or received by Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

#### **9.10 Counterparts; Integration; Effectiveness**

. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Lender and when the Lender shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g. “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Agreement.

### **9.11 Survival of Representations and Warranties**

. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Lender, regardless of any investigation made by the Lender or on their behalf and notwithstanding that the Lender may have had notice or knowledge of any Default at the time of any Loan, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

### **9.12 Severability**

. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

### **9.13 Governing Law; Jurisdiction; Etc.**

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. THE COMPANY AND EACH BORROWER IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT

OR ANY OTHER LOAN DOCUMENT AGAINST THE COMPANY OR ANY BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. THE COMPANY AND EACH BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 9.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

#### **9.14 Waiver of Jury Trial**

. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

#### **9.15 Electronic Execution of Assignments and Certain Other Documents**

. The words "execution," "signed," "signature," and words of like import in any amendment, assignment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Lender, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

### **9.16 USA PATRIOT Act**

. The Lender hereby notifies the Company and the other Borrowers that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies the Company and the other Borrowers, which information includes the name and address of the Company and the other Borrowers and other information that will allow such Lender to identify the Company and each other Borrower in accordance with the Act. The Company and each other Borrower shall, promptly following a request by the Lender, provide all documentation and other information that the Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Act.

### **9.17 Designated Senior Debt**

. Each party acknowledges and agrees that the Indebtedness under the Loan Documents is “Designated Senior Debt” (or any similar term) under, and as defined in, each of the ~~Indenture~~Indentures, any other indenture and any other Subordinated Indebtedness.

### **9.18 Keepwell**

. Each Borrower that is a Qualified ECP Guarantor at the time the joint and several liability of any Specified Loan Party (pursuant to Section 2.10), or the Guaranty or the grant of a Lien under the Loan Documents, in each case, by any Specified Loan Party, becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Borrower’s obligations and undertakings under this Article X voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Borrower under this Section shall remain in full force and effect until the Obligations have been indefeasibly paid and performed in full. Each Borrower intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a “keepwell, support or other agreement” for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

### **9.19 Releases.**

(a) On the Facility Termination Date, the Collateral shall be released from the Liens created by the Loan Documents, without delivery of any instrument or performance of any act by any party, and all rights to the Collateral shall revert to the Loan Parties, except for Collateral as to which the Lender has exercised any remedies. At the request and sole expense of any Loan Party following the Facility Termination Date, the Lender shall execute and deliver to such Loan Party such documents as such Loan Party shall reasonably request to evidence such payment and release.

(b) Any of the Collateral sold, transferred or otherwise disposed of by any Loan Party in a Permitted Financed Property Disposition, shall be transferred free of the security interest created hereby on such Collateral, and such security interest shall automatically terminate upon such permitted disposition, in each case upon the satisfaction of any conditions set forth in the

Loan Documents with respect to such Permitted Financed Property Disposition. The Lender, at the request and sole expense of such Loan Party, shall execute and deliver to such Loan Party all releases or other documents reasonably necessary to evidence such release of the Liens created under the Loan Documents on such Collateral. Upon a Permitted Financed Property Disposition, the property sold, transferred or otherwise disposed of in such Permitted Financed Property Disposition shall immediately cease to be a Financed Property.

#### **9.20 Acknowledgement Regarding Any Supported QFCs**

. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, “QFC Credit Support”, and each such QFC, a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party.”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 9.20, the following terms have the following meanings:

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Covered Entity” means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

**FOURTH AMENDMENT TO  
THIRD AMENDED AND RESTATED CREDIT AGREEMENT**

This **FOURTH AMENDMENT TO THIRD AMENDED AND RESTATED CREDIT AGREEMENT**, dated as of May 25, 2022 (this "**Amendment**") is by and among **ASBURY AUTOMOTIVE GROUP, INC.**, a Delaware corporation ("**Company**"), certain Subsidiaries of the Company party hereto as New Vehicle Borrowers (each a "**New Vehicle Borrower**" and collectively with the Used Vehicle Borrowers (defined below), the "**Vehicle Borrowers**"), certain Subsidiaries of the Company party hereto as Used Vehicle Borrowers (each a "**Used Vehicle Borrower**", and collectively with the Company, the "**Used Vehicle Borrowers**"), the Guarantors party hereto, the Lenders (as defined below), and **BANK OF AMERICA, N.A.**, as Administrative Agent, Revolving Swing Line Lender, New Vehicle Floorplan Swing Line Lender, Used Vehicle Floorplan Swing Line Lender and an L/C Issuer. The Vehicle Borrowers, including the Company in its capacity as Borrower under the Revolving Credit Facility, are referred to collectively as the "**Borrowers**" and individually as a "**Borrower**".

**WITNESSETH:**

**WHEREAS**, the Administrative Agent, Revolving Swing Line Lender, New Vehicle Floorplan Swing Line Lender, Used Vehicle Floorplan Swing Line Lender, L/C Issuer, certain financial institutions from time to time party thereto as lenders (the "**Lenders**") and the Borrowers are parties to that certain Third Amended and Restated Credit Agreement, dated as of September 25, 2019 (as otherwise amended, supplemented or modified from time to time, the "**Existing Credit Agreement**"; capitalized terms used but not defined herein shall have the meanings set forth in the Amended Credit Agreement).

**WHEREAS**, the Company and the Borrowers have requested (a) amendments relating to the mechanics of the New Vehicle Floorplan Offset Account, including removal of the current restriction that the Floorplan Offset Amount shall not exceed 20% of the aggregate Outstanding Amount of all New Vehicle Floorplan Loans at any time, and (b) certain other amendments to the Credit Agreement, as more specifically set forth herein.

**WHEREAS**, the Administrative Agent and the Lenders have agreed to such requests, subject to the terms and conditions of this Amendment.

**WHEREAS**, by this Amendment, the Administrative Agent, the Lenders, the Company and the Borrowers desire and intend to evidence the amendments set forth herein.

**NOW, THEREFORE**, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

**SECTION 1 - DEFINITIONS; AMENDMENTS**

**1.1 Amendments to Credit Agreement Effective on Fourth Amendment Effective Date.** Simultaneously with the Fourth Amendment Effective Date, the parties hereby agree that:

(a) the Existing Credit Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text), each as set forth in the pages of a conformed copy of the Existing Credit Agreement, as amended hereby, attached as Annex A hereto (as so amended, the "**Amended Credit Agreement**" and the Amended Credit Agreement as otherwise amended, restated, supplemented or otherwise modified from time to time on or after the date hereof, the "**Credit Agreement**"); and

(b) This Amendment is not a novation of the Existing Credit Agreement or of any credit facility or guaranty provided thereunder or in respect thereof. Notwithstanding that the cover page of the Amended Credit Agreement is dated "as of September 25, 2019" and Section 4.01 of the Amended Credit Agreement attached hereto contains those conditions which were applicable to the initial Closing

Date of September 25, 2019, the changes to the Existing Credit Agreement effected by Section 1.1 of this Amendment shall be effective as of the satisfaction to the conditions effectiveness set forth in Section 2.1 of this Amendment. The signature pages contained may be left off of the Amended Credit Agreement.

## SECTION 2 - CONDITIONS PRECEDENT TO EFFECTIVENESS

**2.1** This Amendment shall become effective upon the satisfaction or waiver by the Administrative Agent and Lenders of each of the following conditions precedent (the date of such satisfaction or waiver, the "Fourth Amendment Effective Date"):

(a) The Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each of which shall be properly executed by a Responsible Officer of the signing Loan Party, each dated the Fourth Amendment Effective Date and each in form and substance satisfactory to the Administrative Agent and each of the Lenders:

(i) executed counterparts of this Amendment from the Administrative Agent, the Borrowers, the Guarantors, each Lender, in each case sufficient in number for distribution to the Administrative Agent, the Administrative Agent's counsel and the Company;

(ii) a termination of the New Vehicle Floorplan Offset Agreement, executed by the parties thereto, in form and substance satisfactory to the Administrative Agent and the New Vehicle Swing Line Lender; and

(iii) a termination of the New Vehicle Automated Sweep Agreement, executed by the parties thereto, in form and substance satisfactory to the Administrative Agent and the New Vehicle Swing Line Lender.

(b) (i) Upon the reasonable request of any Lender made at least ten (10) Business Days prior to the Fourth Amendment Effective Date, each Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the Act, in each case at least three (3) Business Days prior to the Fourth Amendment Effective Date and (ii) at least three (3) Business Days prior to the Fourth Amendment Effective Date, any Loan Party that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall have delivered, to each Lender that so requests, a Beneficial Ownership Certification in relation to such Loan Party.

(c) The Company shall have paid all reasonable accrued fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced prior to or on the Fourth Amendment Effective Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Company and the Administrative Agent).

## SECTION 3 - MISCELLANEOUS

**3.1 Binding Effect.** This Amendment shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and their respective successors and assigns.

**3.2 Affirmation of Borrowers and Guarantors.** Each Borrower and each Guarantor hereby (a) consents to the amendments and modifications to the Credit Agreement effected hereby, and (b) confirms and agrees that, notwithstanding the effectiveness of this Amendment, each Loan Document to which such Borrower or such Guarantor, as applicable, is a party is, and the obligations of such Borrower or such Guarantor, as applicable, contained in the Credit Agreement, as amended and modified hereby, or in any other Loan Documents to which it is a party are, and shall continue to be, in full force and effect



and are hereby ratified and confirmed in all respects, in each case as amended and modified by this Amendment. Without limiting the generality of the foregoing, the execution of this Amendment shall not constitute a novation or discharge of, any obligation of any Loan Party under the Credit Agreement or any other Loan Document, and each Loan Party agrees that the Security Instruments and any other documents or instruments executed, filed or recorded in connection therewith, shall remain outstanding and in full force and effect, and all of the Collateral described therein and Liens granted in favor of the Administrative Agent created thereunder do and shall continue to secure the Obligations and the “Obligations”, “Guarantied Obligations” or “Secured Obligations” (as those terms are defined in the Company Guaranty and the Subsidiary Guaranty) and any other obligations to the extent provided in the Security Instruments and that all such Liens continue to be perfected as security for the Obligations and the “Obligations”, “Guarantied Obligations” or “Secured Obligations” (as those terms are defined in the Company Guaranty and the Subsidiary Guaranty) and any other obligations secured thereby.

### **3.3 Representations and Warranties.**

(a) This Amendment has been duly authorized, executed and delivered by each of the other Loan Parties party hereto and constitutes a legal, valid and binding obligation of each such party, except as may be limited by general principles of equity or by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors’ rights generally.

(b) The representations and warranties made by each Loan Party in Article V of the Credit Agreement and in each of the other Loan Documents to which such Loan Party is a party are true and correct in all material respects (or if qualified by materiality or Material Adverse Effect, in all respects) on and as of the Fourth Amendment Effective Date, except to the extent that such representations and warranties expressly relate to an earlier date in which case they are true and correct in all material respects (or if qualified by materiality or Material Adverse Effect, in all respects) as of such earlier date.

(c) No Default or Event of Default has occurred and is continuing as of the Fourth Amendment Effective Date.

**3.4 Severability.** In case any provision in or obligation hereunder shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

### **3.5 Reference to and Effect on Credit Agreement and the Loan Documents.**

(a) On and after the effectiveness of this Amendment, each reference in the Credit Agreement to “this Agreement”, “hereunder”, “hereof” or words of like import referring to the Credit Agreement, and each reference in the Notes and each of the other Loan Documents to “the Credit Agreement”, “thereunder”, “thereof” or words of like import referring to the Credit Agreement, shall mean and be a reference to the Credit Agreement, as amended and modified by this Amendment and as further amended, restated or modified from time to time in accordance with the terms thereof.

(b) The Credit Agreement and each of the other Loan Documents, as specifically amended and modified by this Amendment, are and shall continue to be in full force and effect and are hereby in all respects ratified and confirmed.

(c) The Administrative Agent, the Lenders and the Loan Parties agree that this Amendment shall be a Loan Document for all purposes of the Credit Agreement (as specifically amended by this Amendment) and the other Loan Documents.

**3.6 No Waiver.** The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, constitute a waiver or novation of any right, power or remedy of any Lender, L/C Issuer, Revolving Swing Line Lender, New Vehicle Floorplan Swing Line Lender, Used Vehicle Floorplan Swing Line Lender or the Administrative Agent under any of the Loan Documents, nor

constitute a waiver or novation of any provision of any of the Loan Documents. This Amendment is limited to the matters expressly referred to herein and shall not constitute an amendment or waiver of, or an indication of the Lender's willingness to amend or waive, any other provisions of the Credit Agreement or the same provisions for any other date or purpose.

**3.7 Waiver, Modification, Etc.** No provision or term of this Amendment may be modified, altered, waived, discharged or terminated orally, but only by an instrument in writing executed by the party against whom such modification, alteration, waiver, discharge or termination is sought to be enforced.

**3.8 Headings.** Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

**3.9 GOVERNING LAW.** THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

**3.10 Counterparts.** This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are attached to the same document. Delivery of an executed signature page of this Amendment by facsimile transmission or electronic mail shall be as effective as delivery of a manually executed counterpart hereof.

*(Signature Pages Follow)*

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed as of the date first above written.

**ASBURY AUTOMOTIVE GROUP, INC.**

By: /s/ Karen Reid  
Typed Name: Karen Reid  
Typed Title: Vice President - Corporate Financial Planning & Analysis and Treasurer

**NEW VEHICLE BORROWERS:**

ASBURY AR NISS L.L.C.  
ASBURY ARLINGTON MB, LLC  
ASBURY ATLANTA AC L.L.C.  
ASBURY ATLANTA AU L.L.C.  
ASBURY ATLANTA BM L.L.C.  
ASBURY ATLANTA CHEV, LLC  
ASBURY ATLANTA HON L.L.C.  
ASBURY ATLANTA HUND L.L.C.  
ASBURY ATLANTA INF L.L.C.  
ASBURY ATLANTA INFINITI L.L.C.  
ASBURY ATLANTA K L.L.C.  
ASBURY ATLANTA LEX L.L.C.  
ASBURY ATLANTA NIS II, LLC  
ASBURY ATLANTA NIS L.L.C.  
ASBURY ATLANTA TOY 2 L.L.C.  
ASBURY ATLANTA TOY L.L.C.  
ASBURY ATLANTA VB L.L.C.  
ASBURY AURORA TOY, LLC  
ASBURY AUTOMOTIVE BRANDON, L.P.  
ASBURY AUTOMOTIVE ST. LOUIS, L.L.C.  
ASBURY AUTOMOTIVE WEST, LLC  
ASBURY CH MOTORS L.L.C.  
ASBURY CO CDJR, LLC  
ASBURY CO GEN, LLC  
ASBURY CO HG, LLC  
ASBURY CO LEX, LLC  
ASBURY CO SUB, LLC  
ASBURY DALLAS MB, LLC  
ASBURY DALLAS POR, LLC  
ASBURY DALLAS VOL, LLC

By: /s/ Karen Reid  
Typed Name: Karen Reid  
Typed Title: Vice President - Corporate Financial Planning & Analysis and Treasurer

**NEW VEHICLE BORROWERS, continued:**

ASBURY DELAND HUND, LLC  
ASBURY DFW JLR, LLC  
ASBURY FORT WORTH MB, LLC  
ASBURY GEORGIA TOY, LLC

ASBURY GREELEY SUB, LLC  
ASBURY IN CBG, LLC  
ASBURY IN CDJ, LLC  
ASBURY IN CHEV, LLC  
ASBURY IN FORD, LLC  
ASBURY IN HON, LLC  
ASBURY IN TOY, LLC  
ASBURY INDY CHEV, LLC  
ASBURY JAX AC, LLC  
ASBURY JAX HON L.L.C.  
ASBURY LAKEWOOD CHEV, LLC  
ASBURY LAKEWOOD TOY, LLC  
ASBURY LITTLETON JLR, LLC  
ASBURY LITTLETON POR, LLC  
ASBURY LONGMONT HUND, LLC  
ASBURY MS CHEV L.L.C.  
ASBURY NOBLESVILLE CDJR, LLC  
ASBURY PLANO LEX, LLC  
ASBURY SC JPV L.L.C.  
ASBURY SC LEX L.L.C.  
ASBURY SC TOY L.L.C.  
ASBURY ST. LOUIS LEX L.L.C.  
ASBURY ST. LOUIS LR L.L.C.  
ASBURY ST. LOUIS M L.L.C.  
ASBURY TX AUCTION, LLC  
ASBURY-DELAND IMPORTS, L.L.C.  
AVENUES MOTORS, LTD.  
BFP MOTORS L.L.C.  
CFP MOTORS L.L.C.  
CH MOTORS L.L.C.  
CHO PARTNERSHIP, LTD.  
CN MOTORS L.L.C.  
COGGIN CARS L.L.C.  
COGGIN CHEVROLET L.L.C.  
CROWN CHH L.L.C.  
CROWN FDO L.L.C.  
CROWN GAC L.L.C.  
CROWN GBM L.L.C.  
CROWN GDO L.L.C.

By: /s/ Karen Reid

Typed Name: Karen Reid

Typed Title: Vice President - Corporate Financial Planning & Analysis and Treasurer

**NEW VEHICLE BORROWERS, continued:**

CROWN GHO L.L.C.  
CROWN GNI L.L.C.  
CROWN GVO L.L.C.  
CROWN MOTORCAR COMPANY L.L.C.  
CROWN PBM L.L.C.  
CROWN RIA L.L.C.  
CROWN RIB L.L.C.  
CROWN SNI L.L.C.  
CSA IMPORTS L.L.C.  
ESCUDE-NN L.L.C.  
ESCUDE-NS L.L.C.  
ESCUDE-T L.L.C.  
HFP MOTORS L.L.C.  
KP MOTORS L.L.C.  
LARRY H. MILLER COMPANY – BOUNTIFUL, L.L.C.  
LHM ACD, LLC  
LHM ACJ, LLC  
LHM ADR, LLC  
LHM ALH, LLC  
LHM AMT, LLC  
LHM ANI, LLC  
LHM AVW, LLC  
LHM BCD, LLC  
LHM BSU, LLC  
LHM BUC, LLC  
LHM CHV, LLC  
LHM CTO, LLC  
LHM DCJ, LLC  
LHM DDR, LLC  
LHM DNI, LLC  
LHM FLT, LLC  
LHM HOB, LLC  
LHM HON, LLC  
LHM HYN, LLC  
LHM LCJ, LLC  
LHM LEX, LLC  
LHM LFO, LLC  
LHM LMD, LLC  
LHM MBL, LLC

By: /s/ Karen Reid

Typed Name: Karen Reid

Typed Title: Vice President - Corporate Financial Planning & Analysis and Treasurer

**NEW VEHICLE BORROWERS, continued:**

LHM MNI, LLC  
LHM MUR, LLC  
LHM NHR, LLC  
LHM PCD, LLC

LHM PCH, LLC  
LHM PFL, LLC  
LHM PNK, LLC  
LHM QCH, LLC  
LHM QCJ, LLC  
LHM RCD, LLC  
LHM SCD, LLC  
LHM SHO, LLC  
LHM SFL, LLC  
LHM SFO, LLC  
LHM SWH, LLC  
LHM TCD, LLC  
LHM TCJ, LLC  
LHM TDR, LLC  
LHM TSD, LLC  
LHM TVW, LLC  
LHM UCN, LLC  
LHM UCO, LLC  
LHM UCS, LLC  
MCDAVID AUSTIN-ACRA, L.L.C.  
MCDAVID FRISCO-HON, L.L.C.  
MCDAVID HOUSTON-NISS, L.L.C.  
MCDAVID IRVING-HON, L.L.C.  
MCDAVID PLANO-ACRA, L.L.C.  
NP MZD L.L.C.  
NP VKW L.L.C.  
OSBORN/MILLER AUTOMOTIVE, LLC  
PRECISION INFINITI, INC.  
PRECISION MOTORCARS, INC.  
PRECISION NISSAN, INC.  
PREMIER NSN L.L.C.  
PREMIER PON L.L.C.  
PRESTIGE BAY L.L.C.  
PRESTIGE TOY L.L.C.  
Q AUTOMOTIVE BRANDON FL, LLC  
Q AUTOMOTIVE CUMMING GA, LLC  
Q AUTOMOTIVE FT. MYERS FL, LLC

By: /s/ Karen Reid

Typed Name: Karen Reid

Typed Title: Vice President - Corporate Financial Planning & Analysis and Treasurer

**NEW VEHICLE BORROWERS, continued:**

Q AUTOMOTIVE HOLIDAY FL, LLC  
Q AUTOMOTIVE JACKSONVILLE FL, LLC  
Q AUTOMOTIVE KENNESAW GA, LLC  
Q AUTOMOTIVE ORLANDO FL, LLC  
Q AUTOMOTIVE TAMPA FL, LLC  
TAMPA HUND, L.P.  
TAMPA KIA, L.P.  
WTY MOTORS, L.P.

By: /s/ Karen Reid

Typed Name: Karen Reid  
Typed Title: Vice President - Corporate Financial Planning & Analysis and Treasurer

**USED VEHICLE BORROWERS:**

ASBURY AUTOMOTIVE GROUP, INC.  
AF MOTORS, L.L.C.  
ASBURY AR NISS L.L.C.  
ASBURY ARLINGTON MB, LLC  
ASBURY ATLANTA AC L.L.C.  
ASBURY ATLANTA AU L.L.C.  
ASBURY ATLANTA BM L.L.C.  
ASBURY ATLANTA CHEV, LLC  
ASBURY ATLANTA FORD, LLC  
ASBURY ATLANTA HON L.L.C.  
ASBURY ATLANTA HUND L.L.C.  
ASBURY ATLANTA INF L.L.C.  
ASBURY ATLANTA INFINITI L.L.C.  
ASBURY ATLANTA K L.L.C.  
ASBURY ATLANTA LEX L.L.C.  
ASBURY ATLANTA NIS II, LLC  
ASBURY ATLANTA NIS L.L.C.  
ASBURY ATLANTA TOY 2 L.L.C.  
ASBURY ATLANTA TOY L.L.C.  
ASBURY ATLANTA VB L.L.C.  
ASBURY AURORA TOY, LLC  
ASBURY AUTOMOTIVE BRANDON, L.P.  
ASBURY AUTOMOTIVE ST. LOUIS, L.L.C.  
ASBURY CH MOTORS L.L.C.  
ASBURY CO CDJR, LLC

By: /s/ Karen Reid

Typed Name: Karen Reid  
Typed Title: Vice President - Corporate Financial Planning & Analysis and Treasurer  
**USED VEHICLE BORROWERS, continued:**

ASBURY CO GEN, LLC  
ASBURY CO HG, LLC  
ASBURY CO LEX, LLC  
ASBURY CO SUB, LLC  
ASBURY DALLAS MB, LLC  
ASBURY DALLAS POR, LLC  
ASBURY DALLAS VOL, LLC  
ASBURY DELAND HUND, LLC  
ASBURY DFW JLR, LLC  
ASBURY FORT WORTH MB, LLC  
ASBURY FT. WORTH FORD, LLC  
ASBURY GEORGIA TOY, LLC  
ASBURY GREELEY SUB, LLC  
ASBURY IN CBG, LLC  
ASBURY IN CDJ, LLC  
ASBURY IN CHEV, LLC  
ASBURY IN FORD, LLC

ASBURY IN HON, LLC  
ASBURY IN TOY, LLC  
ASBURY INDY CHEV, LLC  
ASBURY JAX AC, LLC  
ASBURY JAX FORD, LLC  
ASBURY JAX HON L.L.C.  
ASBURY LAKEWOOD CHEV, LLC  
ASBURY LAKEWOOD TOY, LLC  
ASBURY LITTLETON JLR, LLC  
ASBURY LITTLETON POR, LLC  
ASBURY LONGMONT HUND, LLC  
ASBURY MS CHEV L.L.C.  
ASBURY MS GRAY-DANIELS L.L.C.  
ASBURY NOBLESVILLE CDJR, LLC  
ASBURY PLANO LEX, LLC  
ASBURY SC JPV L.L.C.  
ASBURY SC LEX L.L.C.  
ASBURY SC TOY L.L.C.  
ASBURY ST. LOUIS LEX L.L.C.  
ASBURY ST. LOUIS LR L.L.C.  
ASBURY ST. LOUIS M L.L.C.  
ASBURY TX AUCTION, LLC  
ASBURY-DELAND IMPORTS, L.L.C.  
AVENUES MOTORS, LTD.  
BFP MOTORS L.L.C.  
CFP MOTORS L.L.C.

By: /s/ Karen Reid

Typed Name: Karen Reid

Typed Title: Vice President - Corporate Financial Planning & Analysis and Treasurer

**USED VEHICLE BORROWERS, continued:**

CH MOTORS L.L.C.  
CHO PARTNERSHIP, LTD.  
CN MOTORS L.L.C.  
COGGIN CARS L.L.C.  
COGGIN CHEVROLET L.L.C.  
CROWN CHH L.L.C.  
CROWN FDO L.L.C.  
CROWN FFO L.L.C.  
CROWN GAC L.L.C.  
CROWN GBM L.L.C.  
CROWN GDO L.L.C.  
CROWN GHO L.L.C.  
CROWN GNI L.L.C.  
CROWN GVO L.L.C.  
CROWN MOTORCAR COMPANY L.L.C.  
CROWN PBM L.L.C.  
CROWN RIA L.L.C.  
CROWN RIB L.L.C.  
CROWN SNI L.L.C.  
CSA IMPORTS L.L.C.  
ESCUDE-NN L.L.C.  
ESCUDE-NS L.L.C.  
ESCUDE-T L.L.C.  
HFP MOTORS L.L.C.



**KP MOTORS L.L.C.  
LARRY H. MILLER COMPANY – BOUNTIFUL, L.L.C.  
LHM ACD, LLC  
LHM ACJ, LLC  
LHM ADR, LLC  
LHM ALH, LLC  
LHM AMT, LLC  
LHM ANI, LLC  
LHM AVW, LLC  
LHM BCD, LLC  
LHM BSU, LLC  
LHM BUC, LLC  
LHM CHV, LLC  
LHM CTO, LLC  
LHM DCJ, LLC  
LHM DDR, LLC**

By: /s/ Karen Reid  
Typed Name: Karen Reid  
Typed Title: Vice President - Corporate Financial Planning & Analysis and Treasurer

Asbury Automotive Group, Inc.  
FOURTH AMENDMENT TO THIRD AMENDED AND RESTATED CREDIT AGREEMENT  
Signature Page

**USED VEHICLE BORROWERS, continued:**

LHM DNI, LLC  
LHM FLT, LLC  
LHM HOB, LLC  
LHM HON, LLC  
LHM HYN, LLC  
LHM LCJ, LLC  
LHM LEX, LLC  
LHM LFO, LLC  
LHM LMD, LLC  
LHM MBL, LLC  
LHM MFD, LLC  
LHM MNI, LLC  
LHM MUR, LLC  
LHM NHR, LLC  
LHM PCD, LLC  
LHM PCH, LLC  
LHM PFL, LLC  
LHM PNX, LLC  
LHM QCH, LLC  
LHM QCJ, LLC  
LHM RCD, LLC  
LHM SCD, LLC  
LHM SFL, LLC  
LHM SFO, LLC  
LHM SHO, LLC  
LHM SWH, LLC  
LHM TCD, LLC  
LHM TCJ, LLC  
LHM TDR, LLC  
LHM TSD, LLC  
LHM TVW, LLC  
LHM UCN, LLC  
LHM UCO, LLC  
LHM UCS, LLC  
MCDAVID AUSTIN-ACRA, L.L.C.  
MCDAVID FRISCO-HON, L.L.C.  
MCDAVID HOUSTON-NISS, L.L.C.  
MCDAVID IRVING-HON, L.L.C.  
MCDAVID PLANO-ACRA, L.L.C.  
NP FLM L.L.C.

By: /s/ Karen Reid  
Typed Name: Karen Reid  
Typed Title: Vice President - Corporate Financial Planning & Analysis and Treasurer

**USED VEHICLE BORROWERS, continued:**

NP MZD L.L.C.  
NP VKW L.L.C.  
OSBORN/MILLER AUTOMOTIVE, LLC  
PLANO LINCOLN-MERCURY, INC.

PRECISION INFINITI, INC.  
PRECISION MOTORCARS, INC.  
PRECISION NISSAN, INC.  
PREMIER NSN L.L.C.  
PREMIER PON L.L.C.  
PRESTIGE BAY L.L.C.  
PRESTIGE TOY L.L.C.  
Q AUTOMOTIVE BRANDON FL, LLC  
Q AUTOMOTIVE CUMMING GA, LLC  
Q AUTOMOTIVE FT. MYERS FL, LLC  
Q AUTOMOTIVE HOLIDAY FL, LLC  
Q AUTOMOTIVE JACKSONVILLE FL, LLC  
Q AUTOMOTIVE KENNESAW GA, LLC  
Q AUTOMOTIVE ORLANDO FL, LLC  
Q AUTOMOTIVE TAMPA FL, LLC  
TAMPA HUND, L.P.  
TAMPA KIA, L.P.  
WTY MOTORS, L.P.

By: /s/ Karen Reid

Typed Name: Karen Reid

Typed Title: Vice President - Corporate Financial Planning & Analysis and Treasurer

**GUARANTORS:**

AF MOTORS, L.L.C.  
ANL, L.P.  
ARKANSAS AUTOMOTIVE SERVICES, L.L.C.  
ASBURY AR NISS L.L.C.  
ASBURY ARLINGTON MB, LLC  
ASBURY ATLANTA AC L.L.C.  
ASBURY ATLANTA AU L.L.C.  
ASBURY ATLANTA BM L.L.C.  
ASBURY ATLANTA CHEV, LLC  
ASBURY ATLANTA CHEVROLET L.L.C.  
ASBURY ATLANTA FORD, LLC

By: /s/ Karen Reid

Typed Name: Karen Reid

Typed Title: Vice President - Corporate Financial Planning & Analysis and Treasurer

**GUARANTORS, continued:**

ASBURY ATLANTA HON L.L.C.  
ASBURY ATLANTA HUND L.L.C.  
ASBURY ATLANTA INF L.L.C.  
ASBURY ATLANTA INFINITI L.L.C.  
ASBURY ATLANTA JAGUAR L.L.C.  
ASBURY ATLANTA K L.L.C.  
ASBURY ATLANTA LEX L.L.C.  
ASBURY ATLANTA NIS II, LLC  
ASBURY ATLANTA NIS L.L.C.  
ASBURY ATLANTA TOY 2 L.L.C.

ASBURY ATLANTA TOY L.L.C.  
ASBURY ATLANTA VB L.L.C.  
ASBURY ATLANTA VL L.L.C.  
ASBURY AURORA TOY, LLC  
ASBURY AUTOMOTIVE ARKANSAS DEALERSHIP HOLDINGS L.L.C.  
ASBURY AUTOMOTIVE ARKANSAS L.L.C.  
ASBURY AUTOMOTIVE ATLANTA II L.L.C.  
ASBURY AUTOMOTIVE ATLANTA L.L.C.  
ASBURY AUTOMOTIVE BRANDON, L.P.  
ASBURY AUTOMOTIVE CENTRAL FLORIDA, L.L.C.  
ASBURY AUTOMOTIVE DELAND, L.L.C.  
ASBURY AUTOMOTIVE FRESNO L.L.C.  
ASBURY AUTOMOTIVE GROUP L.L.C.  
ASBURY AUTOMOTIVE JACKSONVILLE GP L.L.C.  
ASBURY AUTOMOTIVE JACKSONVILLE, L.P.  
ASBURY AUTOMOTIVE MANAGEMENT L.L.C.  
ASBURY AUTOMOTIVE MISSISSIPPI L.L.C.  
ASBURY AUTOMOTIVE NORTH CAROLINA DEALERSHIP HOLDINGS L.L.C.  
ASBURY AUTOMOTIVE NORTH CAROLINA L.L.C.  
ASBURY AUTOMOTIVE NORTH CAROLINA MANAGEMENT L.L.C.  
ASBURY AUTOMOTIVE NORTH CAROLINA REAL ESTATE HOLDINGS L.L.C.  
ASBURY AUTOMOTIVE OREGON L.L.C.  
ASBURY AUTOMOTIVE SOUTHERN CALIFORNIA L.L.C.  
ASBURY AUTOMOTIVE ST. LOUIS II L.L.C.  
ASBURY AUTOMOTIVE ST. LOUIS, L.L.C.  
ASBURY AUTOMOTIVE TAMPA GP L.L.C.  
ASBURY AUTOMOTIVE TAMPA, L.P.  
ASBURY AUTOMOTIVE TEXAS L.L.C.

By: /s/ Karen Reid

Typed Name: Karen Reid

Typed Title: Vice President - Corporate Financial Planning & Analysis and Treasurer

**GUARANTORS, continued:**

ASBURY AUTOMOTIVE TEXAS REAL ESTATE HOLDINGS L.L.C.  
ASBURY AUTOMOTIVE WEST, LLC  
ASBURY CH MOTORS L.L.C.  
ASBURY CO CDJR, LLC  
ASBURY CO GEN, LLC  
ASBURY CO HG, LLC  
ASBURY CO LEX, LLC  
ASBURY CO SUB, LLC  
ASBURY DALLAS MB, LLC  
ASBURY DALLAS POR, LLC  
ASBURY DALLAS VOL, LLC  
ASBURY DELAND HUND, LLC  
ASBURY DELAND IMPORTS 2, L.L.C.  
ASBURY DFW JLR, LLC

ASBURY FORT WORTH MB, LLC  
ASBURY FRESNO IMPORTS L.L.C.  
ASBURY FT. WORTH FORD, LLC  
ASBURY GEORGIA TOY, LLC  
ASBURY GREELEY SUB, LLC  
ASBURY IN CBG, LLC  
ASBURY IN CDJ, LLC  
ASBURY IN CHEV, LLC  
ASBURY IN FORD, LLC  
ASBURY IN HON, LLC  
ASBURY IN TOY, LLC  
ASBURY INDY CHEV, LLC  
ASBURY JAX AC, LLC  
ASBURY JAX FORD, LLC  
ASBURY JAX HOLDINGS, L.P.  
ASBURY JAX HON L.L.C.  
ASBURY JAX K L.L.C.  
ASBURY JAX MANAGEMENT L.L.C.  
ASBURY JAX VW L.L.C.  
ASBURY LAKEWOOD CHEV, LLC  
ASBURY LAKEWOOD TOY, LLC  
ASBURY LITTLETON JLR, LLC  
ASBURY LITTLETON POR, LLC  
ASBURY LONGMONT HUND, LLC  
ASBURY MS CHEV L.L.C.  
ASBURY MS GRAY-DANIELS L.L.C.  
ASBURY NO CAL NISS L.L.C.  
ASBURY NOBLESVILLE CDJR, LLC

By: /s/ Karen Reid

Typed Name: Karen Reid

Typed Title: Vice President - Corporate Financial Planning & Analysis and Treasurer

**GUARANTORS, continued:**

ASBURY PLANO LEX, LLC  
ASBURY RISK SERVICES, LLC  
ASBURY SACRAMENTO IMPORTS L.L.C.  
ASBURY SC JPV L.L.C.  
ASBURY SC LEX L.L.C.  
ASBURY SC TOY L.L.C.  
ASBURY SO CAL DC L.L.C.  
ASBURY SO CAL HON L.L.C.  
ASBURY SO CAL NISS L.L.C.  
ASBURY SOUTH CAROLINA REAL ESTATE HOLDINGS L.L.C.  
ASBURY ST. LOUIS CADILLAC L.L.C.  
ASBURY ST. LOUIS FSKR, L.L.C.  
ASBURY ST. LOUIS LEX L.L.C.  
ASBURY ST. LOUIS LR L.L.C.  
ASBURY ST. LOUIS M L.L.C.  
ASBURY TAMPA MANAGEMENT L.L.C.  
ASBURY TEXAS D FSKR, L.L.C.  
ASBURY TEXAS H FSKR, L.L.C.  
ASBURY TX AUCTION, LLC  
ASBURY-DELAND IMPORTS, L.L.C.  
ATLANTA REAL ESTATE HOLDINGS L.L.C.

AVENUES MOTORS, LTD.  
BAYWAY FINANCIAL SERVICES, L.P.  
BFP MOTORS L.L.C.  
C & O PROPERTIES, LTD.  
CAMCO FINANCE II L.L.C.  
CFP MOTORS L.L.C.  
CH MOTORS L.L.C.  
CHO PARTNERSHIP, LTD.  
CK CHEVROLET L.L.C.  
CK MOTORS LLC  
CN MOTORS L.L.C.  
COGGIN AUTOMOTIVE CORP.  
COGGIN CARS L.L.C.  
COGGIN CHEVROLET L.L.C.  
COGGIN MANAGEMENT, L.P.  
CP-GMC MOTORS L.L.C.  
CROWN ACURA/NISSAN, LLC  
CROWN CHH L.L.C.  
CROWN CHO L.L.C.  
CROWN CHV L.L.C.  
CROWN FDO L.L.C.

By: /s/ Karen Reid

Typed Name: Karen Reid

Typed Title: Vice President - Corporate Financial Planning & Analysis and Treasurer

**GUARANTORS, continued:**

CROWN FFO HOLDINGS L.L.C.  
CROWN FFO L.L.C.  
CROWN GAC L.L.C.  
CROWN GBM L.L.C.  
CROWN GCA L.L.C.  
CROWN GDO L.L.C.  
CROWN GH0 L.L.C.  
CROWN GNI L.L.C.  
CROWN GPG L.L.C.  
CROWN GVO L.L.C.  
CROWN HONDA, LLC  
CROWN MOTORCAR COMPANY L.L.C.  
CROWN PBM L.L.C.  
CROWN RIA L.L.C.  
CROWN RIB L.L.C.  
CROWN SJC L.L.C.  
CROWN SNI L.L.C.  
CSA IMPORTS L.L.C.  
ESCUDE-NN L.L.C.  
ESCUDE-NS L.L.C.  
ESCUDE-T L.L.C.  
FLORIDA AUTOMOTIVE SERVICES L.L.C.  
HFP MOTORS L.L.C.  
JC DEALER SYSTEMS, LLC  
KP MOTORS L.L.C.  
LANDCAR GC, LLC  
LANDCAR MANAGEMENT, LTD.  
LHM ACD, LLC  
LHM ACJ, LLC

LHM ADR, LLC  
LHM ALH, LLC  
LHM AMT, LLC  
LHM ANI, LLC  
LHM AUTO GP HOLDINGS, LLC  
LHM AUTO INTERMEDIATE HOLDINGS I, LLC  
LHM AUTO INTERMEDIATE HOLDINGS II, LLC  
LHM AVW, LLC  
LHM BCD, LLC  
LHM BSU, LLC  
LHM BUC, LLC  
LHM CHV, LLC

By: /s/ Karen Reid

Typed Name: Karen Reid

Typed Title: Vice President - Corporate Financial Planning & Analysis and Treasurer

**GUARANTORS, continued:**

LHM COLLISION CSCO, LLC  
LHM COLLISION OCC, LLC  
LHM CTO, LLC  
LHM DCJ, LLC  
LHM DDR, LLC  
LHM DNI, LLC  
LHM FLT, LLC  
LHM HOB, LLC  
LHM HON, LLC  
LHM HYN, LLC  
LHM LCJ, LLC  
LHM LEX, LLC  
LHM LFO, LLC  
LHM LMD, LLC  
LHM MBL, LLC  
LHM MFD, LLC  
LHM MNI, LLC  
LHM MUR, LLC  
LHM NHR, LLC  
LHM PCD, LLC  
LHM PCH, LLC  
LHM PFL, LLC  
LHM PNK, LLC  
LHM QCH, LLC  
LHM SAX, LLC  
LHM SHO, LLC  
LHM SPO HOLDINGS, LLC  
LHM SWH, LLC  
MCDAVID AUSTIN-ACRA, L.L.C.  
MCDAVID FRISCO-HON, L.L.C.  
MCDAVID GRANDE, L.L.C.  
MCDAVID HOUSTON-HON, L.L.C.  
MCDAVID HOUSTON-NISS, L.L.C.  
MCDAVID IRVING-HON, L.L.C.  
MCDAVID OUTFITTERS, L.L.C.  
MCDAVID PLANO-ACRA, L.L.C.

**MID-ATLANTIC AUTOMOTIVE SERVICES, L.L.C.  
MISSISSIPPI AUTOMOTIVE SERVICES, L.L.C.  
MISSOURI AUTOMOTIVE SERVICES, L.L.C.  
NP FLM L.L.C.  
NP MZD L.L.C.  
NP VKW L.L.C.**

By: /s/ Karen Reid  
Typed Name: Karen Reid  
Typed Title: Vice President - Corporate Financial Planning & Analysis and Treasurer

**GUARANTORS, continued:**

**PLANO LINCOLN-MERCURY, INC.  
PRECISION COMPUTER SERVICES, INC.  
PRECISION ENTERPRISES TAMPA, INC.  
PRECISION INFINITI, INC.  
PRECISION MOTORCARS, INC.  
PRECISION NISSAN, INC.  
PREMIER NSN L.L.C.  
PREMIER PON L.L.C.  
PRESTIGE BAY L.L.C.  
PRESTIGE TOY L.L.C.  
Q AUTOMOTIVE BRANDON FL, LLC  
Q AUTOMOTIVE CUMMING GA, LLC  
Q AUTOMOTIVE FT. MYERS FL, LLC  
Q AUTOMOTIVE GROUP L.L.C.  
Q AUTOMOTIVE HOLIDAY FL, LLC  
Q AUTOMOTIVE JACKSONVILLE FL, LLC  
Q AUTOMOTIVE KENNESAW GA, LLC  
Q AUTOMOTIVE ORLANDO FL, LLC  
Q AUTOMOTIVE TAMPA FL, LLC  
SOUTHERN ATLANTIC AUTOMOTIVE  
SERVICES, L.L.C.  
TAMPA HUND, L.P.  
TAMPA KIA, L.P.  
TAMPA LM, L.P.  
TAMPA MIT, L.P.  
TEXAS AUTOMOTIVE SERVICES, L.L.C.  
THOMASON AUTO CREDIT NORTHWEST, INC.  
THOMASON DAM L.L.C.  
THOMASON FRD L.L.C.  
THOMASON HUND L.L.C.  
THOMASON PONTIAC-GMC L.L.C.  
WMZ MOTORS, L.P.  
WTY MOTORS, L.P.**

By: /s/ Karen Reid  
Typed Name: Karen Reid  
Typed Title: Vice President - Corporate Financial Planning & Analysis and Treasurer



**BANK OF AMERICA, N.A.,**  
as Administrative Agent

By: /s/ Linda Lov  
Typed Name: Linda Lov  
Typed Title: Vice President

**BANK OF AMERICA, N.A.,**  
as a Lender, an L/C Issuer, Revolving Swing Line Lender, New Vehicle Swing Line Lender and  
Used Vehicle Swing Line Lender

By: /s/ Ronald Pfister  
Typed Name: Ronald Pfister  
Typed Title: SRVP

Asbury Automotive Group, Inc.  
FOURTH AMENDMENT TO THIRD AMENDED AND RESTATED CREDIT AGREEMENT  
Signature Page

**JPMORGAN CHASE BANK, N.A.,**  
as a Lender

By: /s/ Adam Sigman  
Typed Name: Adam Sigman  
Typed Title: Executive Director

Asbury Automotive Group, Inc.  
FOURTH AMENDMENT TO THIRD AMENDED AND RESTATED CREDIT AGREEMENT  
Signature Page

**WELLS FARGO BANK, NATIONAL ASSOCIATION**, as a Lender

By: /s/ Chad McNeil  
Typed Name: Chad McNeil  
Typed Title: Senior Vice President

Asbury Automotive Group, Inc.  
FOURTH AMENDMENT TO THIRD AMENDED AND RESTATED CREDIT AGREEMENT  
Signature Page

**TOYOTA MOTOR CREDIT CORPORATION,**  
as a Lender

By: /s/ Dominic Calcaterra  
Typed Name: Dominic Calcaterra  
Typed Title: National Accounts Manager

Asbury Automotive Group, Inc.  
FOURTH AMENDMENT TO THIRD AMENDED AND RESTATED CREDIT AGREEMENT  
Signature Page

**AMERICAN HONDA FINANCE CORPORATION,**  
as a Lender

By: /s/ Matthew Weitzer  
Typed Name: Matthew Weitzer  
Typed Title: DFS Manager

Asbury Automotive Group, Inc.  
FOURTH AMENDMENT TO THIRD AMENDED AND RESTATED CREDIT AGREEMENT  
Signature Page

**MERCEDES-BENZ FINANCIAL SERVICES USA LLC,**  
as a Lender

By: /s/ Farrah Vaughn-Dixon  
Typed Name: Farrah Vaughn-Dixon  
Typed Title: Regional Dealer Credit Manager - National Accounts

Asbury Automotive Group, Inc.  
FOURTH AMENDMENT TO THIRD AMENDED AND RESTATED CREDIT AGREEMENT  
Signature Page

**TRUIST BANK,**  
as a Lender

By: /s/ Alysa Trakas  
Typed Name: Alysa Trakas  
Typed Title: Director

Asbury Automotive Group, Inc.  
FOURTH AMENDMENT TO THIRD AMENDED AND RESTATED CREDIT AGREEMENT  
Signature Page

**U.S. BANK NATIONAL ASSOCIATION,**  
as a Lender

By: /s/ Katherine Taylor  
Typed Name: Katherine Taylor  
Typed Title: Vice President

Asbury Automotive Group, Inc.  
FOURTH AMENDMENT TO THIRD AMENDED AND RESTATED CREDIT AGREEMENT  
Signature Page



**BMW FINANCIAL SERVICES NA, LLC,**  
as a Lender

By: /s/ Alex Calcsola  
Typed Name: Alex Calcsola  
Typed Title: Credit Manager

By: /s/ Thomas Rumfola  
Typed Name: Thomas Rumfola  
Typed Title: General Manager, Commercial Finance Credit

Asbury Automotive Group, Inc.  
FOURTH AMENDMENT TO THIRD AMENDED AND RESTATED CREDIT AGREEMENT  
Signature Page

**MASS MUTUAL ASSET FINANCE LLC,**  
as a Lender

By: /s/ Don Buttler  
Typed Name: Don Buttler  
Typed Title: SVP

Asbury Automotive Group, Inc.  
FOURTH AMENDMENT TO THIRD AMENDED AND RESTATED CREDIT AGREEMENT  
Signature Page

**NISSAN MOTOR ACCEPTANCE COMPANY LLC, formerly known as NISSAN  
MOTOR ACCEPTANCE CORPORATION, as a Lender**

By: /s/ Davette Jackson  
Typed Name: Davette Jackson  
Typed Title: Manager, Dealer Credit

Asbury Automotive Group, Inc.  
FOURTH AMENDMENT TO THIRD AMENDED AND RESTATED CREDIT AGREEMENT  
Signature Page

**SANTANDER BANK, N.A.,**  
as a Lender

By: /s/ Scott Bernstein  
Typed Name: Scott Bernstein  
Typed Title: SVP

Asbury Automotive Group, Inc.  
FOURTH AMENDMENT TO THIRD AMENDED AND RESTATED CREDIT AGREEMENT  
Signature Page

**COMERICA BANK,**  
as a Lender

By: /s/ Steven J Engel  
Typed Name: Steven J Engel  
Typed Title: Vice President

Asbury Automotive Group, Inc.  
FOURTH AMENDMENT TO THIRD AMENDED AND RESTATED CREDIT AGREEMENT  
Signature Page

**ZIONS BANCORPORATION, N.A.,**  
as a Lender

By: /s/ Robert Kastelic  
Typed Name: Robert Kastelic  
Typed Title: SVP

Asbury Automotive Group, Inc.  
FOURTH AMENDMENT TO THIRD AMENDED AND RESTATED CREDIT AGREEMENT  
Signature Page

**KEYBANK NATIONAL ASSOCIATION,**  
as a Lender

By: /s/ Kevin Ringenberg  
Typed Name: Kevin Ringenberg  
Typed Title: Senior Vice President

Asbury Automotive Group, Inc.  
FOURTH AMENDMENT TO THIRD AMENDED AND RESTATED CREDIT AGREEMENT  
Signature Page

**Amended Credit Agreement**

*See attached.*



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Published Deal CUSIP Number: 04343PAN2

**THIRD AMENDED AND RESTATED  
CREDIT AGREEMENT**

Dated as of September 25, 2019

among

**ASBURY AUTOMOTIVE GROUP, INC.,**  
as a Borrower,

and

**CERTAIN OF ITS SUBSIDIARIES,**  
as Vehicle Borrowers

**BANK OF AMERICA, N.A.,**  
as Administrative Agent, Revolving Swing Line Lender,  
New Vehicle Floorplan Swing Line Lender,  
Used Vehicle Floorplan Swing Line Lender and an L/C Issuer,

and

**THE OTHER LENDERS PARTY HERETO**

**JPMORGAN CHASE BANK, N.A.**  
and  
**WELLS FARGO BANK, N.A.,**  
as Co-Syndication Agents

**TOYOTA MOTOR CREDIT CORPORATION**  
and  
**MERCEDES-BENZ FINANCIAL SERVICES USA LLC,**  
as Co-Documentation Agents

—  
**BOFA SECURITIES, INC.,**  
as Sole Lead Arranger and Sole Bookrunner

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### THIRD AMENDED AND RESTATED CREDIT AGREEMENT

This THIRD AMENDED AND RESTATED CREDIT AGREEMENT (“Agreement”) is entered into as of September 25, 2019, among ASBURY AUTOMOTIVE GROUP, INC., a Delaware corporation (the “Company”), certain Subsidiaries of the Company party hereto as New Vehicle Borrowers pursuant to Section 2.24 (each a “New Vehicle Borrower” and collectively with the Used Vehicle Borrowers (defined below), the “Vehicle Borrowers”), certain Subsidiaries of the Company party hereto as Used Vehicle Borrowers pursuant to Section 2.25 (each a “Used Vehicle Borrower”, and collectively with the Company, the “Used Vehicle Borrowers”), each lender from time to time party hereto (collectively, the “Lenders” and individually, a “Lender”), and BANK OF AMERICA, N.A., as Administrative Agent, Revolving Swing Line Lender, New Vehicle Floorplan Swing Line Lender, Used Vehicle Floorplan Swing Line Lender and an L/C Issuer. The Vehicle Borrowers, including the Company in its capacity as Borrower under the Revolving Credit Facility, are referred to collectively as the “Borrowers” and individually as a “Borrower”.

The Company, certain of the Vehicle Borrowers party thereto (the “Existing Vehicle Borrowers”, and collectively with the Company, the “Existing Borrowers”), the Administrative Agent and the Lenders party thereto entered into that certain Second Amended and Restated Credit Agreement dated as of July 25, 2016 (as amended, supplemented or otherwise modified from time to time prior to the date hereof, the “Existing Credit Agreement”), pursuant to which such Lenders provided the Existing Borrowers with a revolving credit facility, a revolving new vehicle floorplan facility and a revolving used vehicle floorplan facility.

The Company has requested that the Lenders amend and restate the Existing Credit Agreement in order to continue to provide a revolving credit facility, a revolving new vehicle floorplan facility and a revolving used vehicle floorplan facility, and the Lenders are willing to do so on the terms and conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

#### ARTICLE I. DEFINITIONS AND ACCOUNTING TERMS

##### 1.01 Assignments and Allocations; Amendment and Restatement.

(a) Simultaneously with the Closing Date, the parties hereby agree that (i) the initial Revolving Commitments are \$250,000,000, the initial Revolving Commitment of each of the Revolving Lenders hereunder shall be as set forth in Schedule 2.01, the outstanding amount of the Revolving Loans (as defined in and under the Existing Credit Agreement, without giving effect to any Revolving Borrowings of Revolving Loans under this Agreement on the Closing Date, but after giving effect to any repayment or reduction thereof with the proceeds of any applicable sources) shall be reallocated in accordance with such Revolving Commitments and the requisite assignments shall be deemed to be made in such amounts by and between the Revolving Lenders and from each Revolving Lender to each other Revolving Lender (including from Revolving Lenders who increase or reduce their Revolving Commitments in connection with this Agreement), with the same force and effect as if such assignments were evidenced by applicable Assignments and Assumptions (as defined in the Existing Credit Agreement) under the Existing Credit Agreement but without the payment of any related assignment fee, and no other documents or instruments, shall be, or shall be required to be, executed in connection with such assignments (all of which requirements are hereby waived) (ii) the initial New Vehicle Floorplan Commitments are \$1,040,000,000, the initial New Vehicle Floorplan Commitment of each of the New Vehicle Floorplan Lenders hereunder shall be as set forth in Schedule 2.01, the outstanding amount of the New Vehicle Floorplan Loans (as defined in and under the Existing Credit Agreement, without giving effect to any New Vehicle Floorplan Borrowings of New Vehicle Floorplan Loans under this Agreement on the Closing Date, but after giving effect to any repayment or reduction thereof with the proceeds of any applicable sources) shall be reallocated in accordance with such New Vehicle Floorplan Commitments and the requisite assignments shall be deemed to be made in such amounts by and between the New Vehicle Floorplan Lenders and from each New Vehicle Floorplan Lender to each other New

Vehicle Floorplan Lender (including from New Vehicle Floorplan Lenders who increase or reduce their New Vehicle Floorplan Commitments in connection with this Agreement), with the same force and effect as if such assignments were evidenced by applicable Assignments and Assumptions (as defined in the Existing Credit Agreement) under the Existing Credit Agreement but without the payment of any related assignment fee, and no other documents or instruments, shall be, or shall be required to be, executed in connection with such assignments (all of which requirements are hereby waived), (iii) the initial Used Vehicle Floorplan Commitments are \$160,000,000, the initial Used Vehicle Floorplan Commitment of each of the Used Vehicle Floorplan Lenders hereunder shall be as set forth in Schedule 2.01, the outstanding amount of the Used Vehicle Floorplan Loans (as defined in and under the Existing Credit Agreement, without giving effect to any Used Vehicle Floorplan Borrowings of Used Vehicle Floorplan Loans under this Agreement on the Closing Date, but after giving effect to any repayment or reduction thereof with the proceeds of any applicable sources) shall be reallocated in accordance with such Used Vehicle Floorplan Commitments and the requisite assignments shall be deemed to be made in such amounts by and between the Used Vehicle Floorplan Lenders and from each Used Vehicle Floorplan Lender to each other Used Vehicle Floorplan Lender (including from Used Vehicle Floorplan Lenders who increase or reduce their Used Vehicle Floorplan Commitments in connection with this Agreement), with the same force and effect as if such assignments were evidenced by applicable Assignments and Assumptions (as defined in the Existing Credit Agreement) under the Existing Credit Agreement but without the payment of any related assignment fee, and no other documents or instruments, shall be, or shall be required to be, executed in connection with such assignments (all of which requirements are hereby waived), (iv) the Revolving Swing Line (as defined under the Existing Credit Agreement) shall continue as the revolving swing line subfacility hereunder, with the Revolving Swing Line Sublimit set out herein, and the Revolving Swing Line Loans (as defined in the Existing Credit Agreement), if any, shall continue as and deemed to be Revolving Swing Line Borrowings hereunder (v) the New Vehicle Floorplan Swing Line (as defined under the Existing Credit Agreement) shall continue as the new vehicle swing line subfacility hereunder, with the New Vehicle Floorplan Swing Line Sublimit set out herein, and the New Vehicle Floorplan Swing Line Loans (as defined in the Existing Credit Agreement), if any, shall continue as and deemed to be New Vehicle Floorplan Swing Line Borrowings hereunder and (vi) the Used Vehicle Floorplan Swing Line (as defined under the Existing Credit Agreement) shall continue as the used vehicle swing line subfacility hereunder, with the Used Vehicle Floorplan Swing Line Sublimit set out herein, and the Used Vehicle Floorplan Swing Line Loans (as defined in the Existing Credit Agreement), if any, shall continue as and deemed to be Used Vehicle Floorplan Swing Line Borrowings hereunder.

(b) On the Closing Date, the applicable Lenders shall make full cash settlement with one another and with any lender under the Existing Credit Agreement that may not be a Lender under this Agreement, in each case through the Administrative Agent, as the Administrative Agent may direct or approve, with respect to all assignments, reallocations and other changes in Commitments, such that after giving effect to such settlements, each Lender's Applicable Percentage of the Aggregate Commitments equals (with customary rounding) its Applicable Percentage of the Outstanding Amount of all Loans. The Borrowers represent that as of the date hereof there are no Obligations arising under any Secured Cash Management Agreement or any Secured Hedge Agreement owing to any Lender (each capitalized term used previously in this sentence as defined in the Existing Credit Agreement) which does not continue as a "Lender" hereunder after giving effect to this Agreement.

(c) The Borrowers, each Guarantor, the Administrative Agent and the Lenders hereby agree that upon the effectiveness of this Agreement, the terms and provisions of the Existing Credit Agreement that in any manner govern or evidence the Obligations, the rights and interests of the Administrative Agent and the Lenders, in any of their respective capacities, and any terms, conditions or matters related to any thereof, shall be and hereby are amended and restated in their entirety by the terms, conditions and provisions of this Agreement, and the terms and provisions of the Existing Credit Agreement, except as otherwise expressly provided herein, shall be superseded by this Agreement.

(d) Notwithstanding this amendment and restatement of the Existing Credit Agreement, including anything in this Section 1.01, and certain of the related "Loan Documents" as defined in the Existing Credit Agreement (the "Prior Loan Documents"), (i) after giving effect to any repayments, commitment reductions and commitment terminations on the date hereof, all of the indebtedness, liabilities and obligations owing by any Borrower (as defined in the Existing Credit Agreement) under the

Existing Credit Agreement and other Prior Loan Documents shall continue as Obligations hereunder, as amended, supplemented or otherwise modified by the terms of this Agreement, (ii) each of this Agreement and the Notes and the other Loan Documents is given as a substitution or supplement of, as the case may be, and not as a payment of, the indebtedness, liabilities and obligations of the Borrowers (as defined in the Existing Credit Agreement) and the Guarantors (as defined in the Existing Credit Agreement) under the Existing Credit Agreement or any Prior Loan Document and is not intended to constitute a novation thereof or of any of the other Prior Loan Documents, and (iii) certain of the Prior Loan Documents will remain in full force and effect, as set forth in such Prior Loan Document. Upon the effectiveness of this Agreement, all Loans (as defined in the Existing Credit Agreement) owing by any Borrower (as defined in the Existing Credit Agreement) and outstanding under the Existing Credit Agreement shall continue as Loans hereunder subject to the terms hereof; and all Letters of Credit (as defined in the Existing Credit Agreement) outstanding under the Existing Credit Agreement shall continue as Letters of Credit hereunder subject to the terms hereof. Loans which are Base Rate Loans, each as defined and outstanding under the Existing Credit Agreement on the Closing Date, shall continue to accrue interest at the Base Rate hereunder, and Loans which are Eurodollar Rate Loans, each as defined and outstanding under the Existing Credit Agreement on the Closing Date, shall continue to accrue interest at the Eurodollar Rate hereunder; provided, that, on and after the Closing Date, the margin applicable to any Loan hereunder shall be as set forth in the definition of Applicable Rate below, without regard to any margin applicable thereto under the Existing Credit Agreement prior to the Closing Date.

(e) The parties hereto agree and acknowledge that for administrative purposes the provisions in this Agreement that are amended by the Fourth Amendment and that relate to Obligations accruing interest at the reference interest rates, including Daily Simple SOFR, shall go into effect as of June 1, 2022, and therefore, notwithstanding anything herein to the contrary, (i) all outstanding Floorplan Loans, Revolving Loans and L/C Advances, and (ii) any Floorplan Loans, Revolving Loans or L/C Advances made on or after the Fourth Amendment Effective Date through and including May 31, 2022, shall in each case during the period from the Fourth Amendment Effective Date through and including May 31, 2022, accrue interest at the Eurodollar Rate or Base Rate (including, if applicable, the Default Rate based on the Eurodollar Rate or the Base Rate), and not Daily Simple SOFR. Without limiting the generality of the foregoing, during the period from the Fourth Amendment Effective Date through and including May 31, 2022, interest shall be subject to the provisions in this Agreement (including without limitation the relevant provisions contained in Sections 1.02, 1.06, 2.16, 2.18, 3.02, 3.03 and 3.04 of this Agreement) governing the Applicable Rate, Base Rate, Base Rate Loans and Eurodollar Rate Loans (as such terms were defined in this Agreement, and as such provisions were in effect, immediately prior to giving effect to the Fourth Amendment).

## 1.02 Defined Terms

. As used in this Agreement, the following terms shall have the meanings set forth below:

“Account Debtor” means each Person obligated in any way on or in connection with an Account, chattel paper or a general intangible (including a payment intangible).

“Acquisition” means the acquisition of (i) a controlling equity interest or other controlling ownership interest in another Person (including the purchase of an option, warrant or convertible or similar type security to acquire such a controlling interest at the time it becomes exercisable by the holder thereof), whether by purchase of such equity or other ownership interest or upon the exercise of an option or warrant for, or conversion of securities into, such equity or other ownership interest, (ii) assets of another Person which constitute all or substantially all of the assets of such Person or of a line or lines of business conducted by or a vehicle franchise or vehicle brand licensed or owned by such Person, or (iii) assets constituting a vehicle dealership.

“Acquisition Indebtedness” has the meaning specified in the Third Amendment.

“Act” has the meaning specified in Section 10.18.

“Additional Commitment Lender” has the meaning specified in Section 2.23(d).

“Administrative Agent” means Bank of America in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify to the Company and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Affiliate” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Aggregate Commitments” means, collectively, the Aggregate Revolving Commitments, the Aggregate New Vehicle Floorplan Commitments and the Aggregate Used Vehicle Floorplan Commitments.

“Aggregate Floorplan Facility Commitments” means, collectively, the Aggregate New Vehicle Floorplan Commitments and the Aggregate Used Vehicle Floorplan Commitments.

“Aggregate New Vehicle Floorplan Commitments” means the New Vehicle Floorplan Commitments of all the New Vehicle Floorplan Lenders.

“Aggregate Revolving Commitments” means the Revolving Commitments of all the Revolving Lenders.

“Aggregate Used Vehicle Floorplan Commitments” means the Used Vehicle Floorplan Commitments of all the Used Vehicle Floorplan Lenders.

“Agreement” has the meaning specified in the introductory paragraph hereto.

“Anniversary Date” means each anniversary of the Closing Date.

“Applicable Facility” means the Revolving Credit Facility, the New Vehicle Floorplan Facility or the Used Vehicle Floorplan Facility, as applicable.

“Applicable Floorplan Principal Reduction” has the meaning specified in Section 2.09(b)(iii).

“Applicable Four-Quarter Period” means with respect to any date of determination, the four-quarter period most recently ended on or prior to such date for which internal financial statements are available.

“Applicable New Vehicle Floorplan Percentage” means with respect to any New Vehicle Floorplan Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate New Vehicle Floorplan Commitments represented by such Lender’s New Vehicle Floorplan Commitment at such time, subject to adjustment as provided in Section 2.27. If the commitment of each New Vehicle Floorplan Lender to make New Vehicle Floorplan Loans have been terminated pursuant to Section 8.04 or if the Aggregate New Vehicle Floorplan Commitments have expired, then the Applicable New Vehicle Floorplan Percentage of each New Vehicle Floorplan Lender shall be determined based on the Applicable New Vehicle Floorplan Percentage of such New Vehicle Floorplan Lender most recently in effect, giving effect to any subsequent assignments. The initial Applicable New Vehicle Floorplan Percentage of each New Vehicle Floorplan Lender is set forth opposite the name of such New Vehicle Floorplan Lender on

Schedule 2.01 or in the Assignment and Assumption pursuant to which such New Vehicle Floorplan Lender becomes a party hereto, as applicable.

“Applicable Percentage” means with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Commitments represented by such Lender’s Commitment at such time, subject to adjustment as provided in Section 2.27. If the commitment of each Lender under an Applicable Facility to make Loans under such Facility (and, in the case of the Revolving Credit Facility, the obligation of each L/C Issuer to make L/C Credit Extensions) have been terminated pursuant to Section 8.02 or Section 8.04 or if the Aggregate Revolving Commitments, the Aggregate New Vehicle Floorplan Commitments or the Aggregate Used Vehicle Floorplan Commitments, as applicable, have expired, then for the purposes of determining the Applicable Percentage of any Lender, the Commitment of such Lender under such Facility shall be calculated in accordance with the second sentence of the definition of “Applicable Revolving Percentage”, “Applicable New Vehicle Floorplan Percentage” or “Applicable Used Vehicle Floorplan Percentage”, as the case may be.

“Applicable Rate” has the following meanings, depending on the Applicable Facility:

(a) With respect to the Revolving Credit Facility, Applicable Rate means the following percentages per annum, based upon the Consolidated Total Lease Adjusted Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(a):

Applicable Rate

| Pricing Level | Consolidated Total Lease Adjusted Leverage Ratio                 | Commitment Fee for Revolving Credit Facility | Letter of Credit Fee for Revolving Credit Facility | <del>Eurodollar Rate</del> Daily Simple SOFR + (for Revolving Credit Facility) | Base Rate + (for Revolving Credit Facility) |
|---------------|--|--|--|--|---|
| 1             | Less than 2.50 to 1.00   | 0.15%  | 0.875%   | 1.00%  | 0.15%                                       |
| 2             | Less than 3.50 to 1.00 but greater than or equal to 2.50 to 1.00 | 0.20%  | 1.125%   | 1.25%  | 0.25%                                       |
| 3             | Less than 4.00 to 1.00 but greater than or equal to 3.50 to 1.00 | 0.25%  | 1.375%   | 1.50%  | 0.50%                                       |
| 4             | Less than 4.50 to 1.00 but greater than or equal to 4.00 to 1.00 | 0.30%  | 1.625%   | 1.75%  | 0.75%                                       |
| 5             | Greater than or equal to 4.50 to 1.00                            | 0.40%  | 1.875%   | 2.00%  | 1.00%                                       |

Any increase or decrease in the Applicable Rate resulting from a change in the Consolidated Total Lease Adjusted Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(a); provided, however, that (i) if a Compliance Certificate is not delivered when due in accordance with such Section, then Pricing Level 5 shall apply as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and shall remain in effect until the date on which such Compliance Certificate is delivered and (ii) the Applicable Rate in effect from the Closing Date through the first Business Day of the calendar month immediately succeeding the date the Compliance Certificate with respect to the fiscal quarter ended September 30, 2019 is delivered (or, if not timely delivered, the date such compliance certificate is required to be delivered) pursuant to Section 6.02(a) shall be Pricing Level 2.

(b) With respect to the New Vehicle Floorplan Facility, Applicable Rate means the following percentages per annum:

| <b>Commitment Fee for New Vehicle Floorplan Facility</b> | <b>Daily Simple SOFR + Eurodollar Rate + (for New Vehicle Floorplan Facility)</b> | <b>Base Rate + (for New Vehicle Floorplan Facility)</b> |
|--|---|---|
| 0.15%  | 1.10%   | 0.10%   |

(c) With respect to the Used Vehicle Floorplan Facility, Applicable Rate means the following percentages per annum:

| <b>Commitment Fee for Used Vehicle Floorplan Facility</b> | <b>Daily Simple SOFR + Eurodollar Rate + (for Used Vehicle Floorplan Facility)</b> | <b>Base Rate + (for Used Vehicle Floorplan Facility)</b> |
|---|--|--|
| 0.15%   | 1.40%  | 0.40%  |

“Applicable Revolving Percentage” means with respect to any Revolving Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Revolving Commitments represented by such Lender’s Revolving Commitment at such time, subject to adjustment as provided in Section 2.27. If the commitment of each Revolving Lender to make Revolving Loans and the obligation of each L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02 or if the Aggregate Revolving Commitments have expired, then the Applicable Revolving Percentage of each Revolving Lender shall be determined based on the Applicable Revolving Percentage of such Lender most recently in effect, giving effect to any subsequent assignments. The initial Applicable Revolving Percentage of each Revolving Lender is set forth opposite the name of such Revolving Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Revolving Lender becomes a party hereto, as applicable.

“Applicable Used Vehicle Floorplan Percentage” means with respect to any Used Vehicle Floorplan Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Used Vehicle Floorplan Commitments represented by such Lender’s Used Vehicle Floorplan Commitment at such time, subject to adjustment as provided in Section 2.27. If the commitment of each Used Vehicle Floorplan Lender to make Used Vehicle Floorplan Loans has been terminated pursuant to Section 8.02 or if the Aggregate Used Vehicle Floorplan Commitments have expired, then the Applicable Used Vehicle Floorplan Percentage of each Used Vehicle Floorplan Lender shall be determined based on the Applicable Used Vehicle Floorplan Percentage of such Used Vehicle Floorplan Lender most recently in effect, giving effect to any subsequent assignments. The initial Applicable Used Vehicle Floorplan Percentage of each Used Vehicle Floorplan Lender is set forth opposite the name of such Used Vehicle Floorplan Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Used Vehicle Floorplan Lender becomes a party hereto, as applicable.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arranger” means BofA Securities, Inc., in its capacity as sole lead arranger and sole bookrunner.

“Asbury New Vehicle Control Period” means any period beginning two (2) Business Days after the date that the Company delivers notice to the New Vehicle Swing Line Lender and the Administrative Agent indicating that the Company desires to have the ability to request New Vehicle Floorplan Borrowings, and continuing until two (2) Business Days after the date that the Company delivers notice to the New Vehicle Swing Line Lender and the Administrative Agent that the Company wishes to terminate such Asbury New Vehicle Control Period.

“Assignee Group” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit D or any other form (including electronic documentation generated by use of an electronic platform) approved by the Administrative Agent.

“Attributable Indebtedness” means, on any date, (a) in respect of any capital lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a capital lease; provided that (a) for purposes of determining compliance with any provision of this Agreement, the determination of whether a lease is to be treated as an operating lease or capital lease shall be made without giving effect to any change in accounting for leases pursuant to GAAP resulting from the implementation of Financial Accounting Standards Board ASU No. 2016-02, Leases (Topic 842), to the extent such adoption would require treating any lease (or similar arrangement conveying the right to use) as a capital lease where such lease (or similar arrangement) would not have been required to be so treated under GAAP as in effect on December 31, 2015.

“Audited Financial Statements” means the audited consolidated balance sheet of the Company and its Subsidiaries for the fiscal year ended December 31, 2018, and the related consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of the Company and its Subsidiaries, including the notes thereto.

“Autoborrow Agreement” means the Revolving Autoborrow Agreement or the Used Vehicle Autoborrow Agreement, as applicable.

“Automatic Debit Date” means the fifth day of a calendar month, provided that if such day is not a Business Day, the respective Automatic Debit Date shall be the next succeeding Business Day.

“Availability Period” means

(a) in the case of the Revolving Credit Facility, the period from and including the Closing Date to the earliest of (i) the Maturity Date, (ii) the date of termination of the Aggregate Revolving Commitments pursuant to Section 2.14, and (iii) the date of termination of the commitment of each Revolving Lender to make Revolving Loans and of the obligation of each L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02,

(b) in the case of the New Vehicle Floorplan Facility, the period from and including the Closing Date to the earliest of (i) the Maturity Date, (ii) the date of termination of the Aggregate New Vehicle Floorplan Commitments pursuant to Section 2.14 and (iii) the date of termination of the commitment of each New Vehicle Floorplan Lender to make New Vehicle Floorplan Loans pursuant to Section 8.04, and

(c) in the case of the Used Vehicle Floorplan Facility, the period from and including the Closing Date to the earliest of (i) the Maturity Date, (ii) the date of termination of the Aggregate Used Vehicle Floorplan Commitments pursuant to Section 2.14 and (iii) the date of termination of the commitment of each Used Vehicle Floorplan Lender to make Used Vehicle Floorplan Loans pursuant to Section 8.02.

“Available Unused Revolving Commitments” means, as of any date of determination, the total of (a) the lesser of the Aggregate Revolving Commitments or the Revolving Borrowing Base minus (b) Total Revolving Outstandings.



“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“Bail-In Legislation” means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, rule, regulation or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Bank of America” means Bank of America, N.A. and its successors.

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate,” ~~and (c) the Eurodollar Rate~~ Daily Simple SOFR plus 1.00%, and (d) 1.00%. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change. If the Base Rate is being used as an alternate rate of interest pursuant to Section 3.03 hereof, then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above.

“Base Rate Committed Loan” means a Revolving Committed Loan, a New Vehicle Floorplan Committed Loan or a Used Vehicle Floorplan Committed Loan, as the context may require, that is a Base Rate Loan.

“Base Rate Loan” means a Loan that bears interest based on the Base Rate.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“Blocked Account Agreement” means a control agreement reasonably satisfactory to the Administrative Agent executed by an institution maintaining a deposit account or securities account for a Borrower or Guarantor, to perfect the Administrative Agent’s Lien on such account.

“Borrower” and “Borrowers” each has the meaning specified in the introductory paragraph hereto.

“Borrower Materials” has the meaning specified in Section 6.02.

“Borrowing” means a Revolving Borrowing, a New Vehicle Floorplan Borrowing, or a Used Vehicle Floorplan Borrowing, as the context may require.

“Borrowing Base Assets” means (a) Company’s or any Subsidiary Guarantor’s Contracts-in-Transit, (b) Company’s or any Subsidiary Guarantor’s Accounts, (c) any New Vehicle Borrower’s New Vehicles, (d) any Used Vehicle Borrower’s Used Vehicles, (e) Company’s or any Subsidiary Guarantor’s Inventory consisting of parts and accessories, (f) Company’s and any Restricted Subsidiary’s Qualified

Cash, (g) Company's or any Subsidiary Guarantor's Equipment (in the case of clauses (a) through (g), whether or not they meet the eligibility criteria for inclusion in the Revolving Borrowing Base or the Used Vehicle Floorplan Borrowing Base), and (h) Eligible Borrowing Base Real Estate.

"Borrowing Base Permitted Liens" means, collectively:

(a) Liens created pursuant to the Loan Documents and securing the Obligations,

(b) Liens permitted by this Agreement that (i) are subordinate in priority to the Liens described in clause (a) of this definition or are Liens for which the Administrative Agent may have established a reasonable reserve, (ii) are non-consensual and have not been agreed to or granted by the Company or any Subsidiary in any agreement or document and (iii) do not secure obligations for money borrowed or any guaranty thereof,

(c) Any Lien permitted by Section 7.02(f) or (g) of this Agreement, provided in each case that the holder of such Lien has not taken any action to exercise any remedy in respect of any asset subject to such Lien, and

(d) solely in the case of any Eligible Borrowing Base Real Estate, zoning, easements and other restrictions on the use of such real estate which do not materially detract from the value of such real estate or (in the reasonable discretion of the Administrative Agent) the mortgageability of such real estate, and which do not materially impair the use of such real estate.

Without limiting the generality of clause (b)(ii) or (iii) above, no Lien that secures any Permitted FMCC Floorplan Indebtedness or Permitted Service Loaner Indebtedness shall constitute a Borrowing Base Permitted Lien.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent's Office is located ~~and, if such day relates to any Eurodollar Rate Loan, means any such day that is also a London Banking Day.~~

"Captive Insurance Company" means any captive insurance company that is either (A) formed by the Company or any of its Subsidiaries or (B) acquired by the Company or any of its Subsidiaries or Affiliates in connection with any Permitted Acquisition, in each case so long as the primary purpose of such entity is providing self-insurance benefits to a Borrower or its Subsidiaries and Affiliates.

"Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Administrative Agent, the respective L/C Issuer or Swing Line Lender (as applicable) and the Lenders, as collateral for L/C Obligations, Obligations in respect of Swing Line Loans, or obligations of Lenders to fund participations in respect of either thereof (as the context may require), cash or deposit account balances or, if the applicable L/C Issuer or Swing Line Lender benefitting from such collateral shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to (a) the Administrative Agent and (b) the respective L/C Issuer or the Swing Line Lender (as applicable). "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"Cash Management Agreement" means any agreement (written or oral) to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements.

"Cash Management Bank" means any Person that, (a) at the time it enters into a Cash Management Agreement, is a Lender or an Affiliate of a Lender, or (b) at the time it (or its Affiliate) becomes a Lender, is a party to a Cash Management Agreement, in each case in its capacity as a party to such Cash Management Agreement.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith or in the implementation thereof and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted, issued or implemented.

“Change of Control” means (a) the direct or indirect sale, transfer, conveyance or other disposition, in one or a series of related transactions, of the voting stock in the Company, the result of which is that a Person other than a Permitted Holder becomes the beneficial owner, directly or indirectly of more than 35% of the voting stock of the Company, measured by voting power rather than number of shares, (b) a Change of Control as defined in the Indentures or (c) a change of control under any indenture or any similar instrument evidencing any refinancing, refunding, renewal or extension of any Subordinated Indebtedness. As used herein, “Permitted Holder” means those direct and indirect beneficial owners of the voting stock of the Company as of the Closing Date. As used herein, voting stock of any Person as of any date means the capital stock of such Person that at such date is entitled to vote in the election of the Board of Directors of such Person.

“Closing Date” means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

“Code” means the Internal Revenue Code of 1986.

“Collateral” means, collectively, the assets and rights and interests in property of any Person in which the Administrative Agent, on behalf of the Secured Parties, is granted a Lien under any Security Instrument as security for all or any portion of the Obligations.

“Commitment” means, as to each Lender, the Revolving Commitment, New Vehicle Floorplan Commitment and Used Vehicle Floorplan Commitment, collectively, of such Lender.

“Commitment Increase Effective Date” has the meaning specified in the Third Amendment.

“Committed Borrowing” means a Revolving Committed Borrowing, a New Vehicle Floorplan Committed Borrowing or a Used Vehicle Floorplan Committed Borrowing, as the context may require.

“Committed Loan” means a Revolving Committed Loan, a New Vehicle Floorplan Committed Loan or a Used Vehicle Floorplan Committed Loan, as the context may require.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Company” has the meaning specified in the introductory paragraph hereto.

“Company Guaranty” means that certain Third Amended and Restated Company Guaranty Agreement executed by the Company dated as of the Closing Date in favor of the Administrative Agent and the Lenders, substantially in the form of Exhibit E, as supplemented, amended, or modified from time to time.

“Competitor” has the meaning set forth in Section 10.06(b)(v).

“Compliance Certificate” means a certificate substantially in the form of Exhibit G.

“Communication” means this Agreement, any Loan Document and any document, any amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to any Loan Document.

“Conforming Changes” means, with respect to the use, administration of or any conventions associated with SOFR or any proposed Successor Rate or Daily Simple SOFR, as applicable, any conforming changes to the definitions of “Base Rate”, “SOFR”, and “Daily Simple SOFR”, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definition of “Business Day”, timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of the Administrative Agent, to reflect the adoption and implementation of such applicable rate(s) and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate exists, in such other manner of administration as the Administrative Agent determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consolidated Adjusted Funded Indebtedness” means, as of any date of determination, for the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary) on a consolidated basis, (a) Consolidated Funded Indebtedness minus (b) Permitted Floorplan Indebtedness.

“Consolidated EBITDA” means, for any period, for the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary), Consolidated EBITDAR for such period minus Consolidated Rental Expense for such period.

“Consolidated EBITDAR” means, for any period, for the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary), on a consolidated basis, an amount equal to Consolidated Net Income for such period plus (a) the following, without duplication, to the extent deducted in calculating such Consolidated Net Income: (i) Consolidated Interest Expense for such period (other than interest expense with respect to Permitted Floorplan Indebtedness), (ii) the provision for Federal, state, local and foreign income Taxes payable by the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries) on a consolidated basis for such period, (iii) depreciation and amortization expense, (iv) other non-cash expenses reducing such Consolidated Net Income which do not represent a cash item in such period or any future period, (v) all losses on and other expenses related to repurchases of long-term Indebtedness, (vi) any expenses or charges related to any issuance of Equity Interests, Investment, Acquisition, disposition, recapitalization or the incurrence or repayment of Indebtedness (including any refinancing thereof) and any amendment or modification to the terms of any such transactions (in each case, whether or not successful), (vii) any fees, expenses or other costs paid in connection with this Agreement, (viii) other non-recurring or unusual losses, and (ix) Consolidated Rental Expense; minus (b) to the extent included in calculating such Consolidated Net Income, (i) all non-cash items increasing Consolidated Net Income for such period, (ii) all gains on repurchases of long-term Indebtedness, (iii) other non-recurring or unusual gains; provided, that the sum of clauses (a)(vi), (a)(vii) and (a)(viii) shall not exceed fifteen percent (15%) of Consolidated EBITDAR for the applicable four-quarter period (calculated after giving effect to any such add-backs).

“Consolidated Fixed Charge Coverage Ratio” means, as of any date of determination, the ratio of (a) the total of (i) Consolidated EBITDAR for the four fiscal quarter period most recently ending on or prior to such date for which internal financial statements are available, less (ii) deemed capital expenditures in an amount equal to \$100,000 for each dealer location in existence on such date, to (b) Consolidated Fixed Charges for such period.

“Consolidated Fixed Charges” means, for any period, the sum of (a) Consolidated Interest Expense for such period (but excluding interest expense with respect to Permitted Floorplan Indebtedness), plus (b) scheduled amortization during such period of the principal portion of all indebtedness for money borrowed (other than any balloon, bullet or similar principal payment which repays or refinances such indebtedness in full) of the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary) on a consolidated basis, plus (c) Consolidated Rental Expense for such period, less (d) Consolidated Pro Forma Rent Savings for such period, plus (e) Taxes paid in cash during such period by the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary) (excluding, any such cash Taxes paid as a result of any gains on repurchases of long-term Indebtedness), less (f) cash refunds of Federal, state, local and foreign income Taxes received by the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary) on a consolidated basis during such period.

“Consolidated Funded Indebtedness” means, as of any date of determination, for the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary) on a consolidated basis, the sum of (a) the outstanding principal amount of all Indebtedness, whether current or long-term, for borrowed money (including Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all purchase money Indebtedness (other than trade accounts payable incurred in the ordinary course of business), (c) all direct reimbursement obligations arising under funded or drawn letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments, (d) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business), (e) Attributable Indebtedness in respect of capital leases and Synthetic Lease Obligations, (f) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (e) above of Persons other than the Company or any Subsidiary (but including Guarantees of Indebtedness of any Specified Insurance Subsidiary), and (g) all Indebtedness of the types referred to in clauses (a) through (f) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which the Company or a Subsidiary (other than a Specified Insurance Subsidiary) is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to the Company or such Subsidiary (or is expressly made with limited recourse to the Company or such Subsidiary, in which case the amount of such Indebtedness (for the purpose of determining Consolidated Funded Indebtedness) is limited to the extent of such recourse).

“Consolidated Interest Expense” means, for any period, for the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary) on a consolidated basis, the sum of (a) all cash interest, premium payments, debt discount, fees, charges and related expenses of the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary) in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, and (b) the portion of rent expense of the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary) with respect to such period under capital leases that is treated as interest in accordance with GAAP.

“Consolidated Net Income” means, for any period, for the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary) on a consolidated basis, the net income of the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries) (excluding extraordinary gains and extraordinary losses) for that period.

“Consolidated Pro Forma Rent Savings” means the pro forma rent savings associated with any leased properties purchased within the prior twelve-month period for the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary) on a consolidated basis as determined by the Company in good faith.

“Consolidated Rental Expense” means, for any period, for the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary) on a consolidated basis, the aggregate amount of fixed and contingent rentals payable by the Company and its

Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary) with respect to leases of real and personal property (excluding capital lease obligations) determined in accordance with GAAP for such period.

“Consolidated Secured Funded Indebtedness” means, as of any date of determination, for the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary) on a consolidated basis, the outstanding principal amount of all Consolidated Funded Indebtedness that is secured by a Lien.

“Consolidated Secured Leverage Ratio” means, as of any date of determination, the ratio of: (a) Consolidated Secured Funded Indebtedness as of the date of determination to (b) Consolidated EBITDA during the Applicable Four-Quarter Period.

“Consolidated Total Lease Adjusted Leverage Ratio” means, as of any date of determination, the ratio of: (a) the sum of (i) Consolidated Adjusted Funded Indebtedness as of the date of determination, minus (ii) the sum of (x) the aggregate amount as of the date of determination of cash on the consolidated balance sheet of the applicable Person and its Restricted Subsidiaries as of such date (to the extent the use thereof for application to payment of Indebtedness is not prohibited by law or any contract to which any such Person is a party) which cash is held in deposit accounts subject to Blocked Account Agreements or in deposit accounts maintained with Bank of America, which ensure, in either case, that the Administrative Agent has a first priority, perfected Lien in such accounts and (y) the Floorplan Offset Amount (if any) as of such date; plus (iii) six (6) times Consolidated Rental Expense during the Applicable Four-Quarter Period (excluding Consolidated Rental Expense relating to any real property acquired during such period to the extent any lease on such property is terminated prior to or simultaneously with such acquisition, but including as Consolidated Rental Expense the “rental payments” for any real property disposed of and leased back to the Company or its Subsidiaries during such period as if such sale-leaseback transaction had occurred on and such “rental payments” began on the first day of such applicable four fiscal quarter period) to (b) Consolidated EBITDAR for the Applicable Four-Quarter Period.

“Consolidated Total Leverage Ratio” means, as of any date of determination, the ratio of: (a) Consolidated Adjusted Funded Indebtedness as of the date of determination minus the sum of (x) the aggregate amount as of the date of determination of cash on the consolidated balance sheet of the applicable Person and its Restricted Subsidiaries as of such date (to the extent the use thereof for application to payment of Indebtedness is not prohibited by law or any contract to which any such Person is a party) which is held in deposit accounts subject to Blocked Account Agreements or in deposit accounts maintained with Bank of America, which ensure, in either case, that the Administrative Agent has a first priority, perfected Lien in such accounts and (y) the Floorplan Offset Amount (if any) as of such date to (b) Consolidated EBITDA for the Applicable Four-Quarter Period.

“Contract-in-Transit” means a contract-in-transit with respect to any Vehicle.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Conversion Notice” means a notice from the Company delivered pursuant to Section 2.14 requesting that any portion of the Aggregate Revolving Commitments be converted into Aggregate New Vehicle Floorplan Commitments or Aggregate Used Vehicle Floorplan Commitments, or that any portion of the Aggregate New Vehicle Floorplan Commitments or Aggregate Used Vehicle Floorplan Commitments be converted to Aggregate Revolving Commitments, which notice, in either case, shall be substantially in the form of Exhibit P.

“Cost of Acquisition” means, with respect to any Acquisition, as at the date of the consummation of such Acquisition, the sum of the following (without duplication): (i) the value of the Equity Interests of any Subsidiary to be transferred in connection with such Acquisition, (ii) the amount of any cash and fair market value of other property (excluding property of the type described in clause (i) and the unpaid principal amount of any debt instrument) given as consideration in connection with such Acquisition as reasonably determined by the Company in good faith, (iii) the amount (determined by using the face amount or the amount payable at maturity, whichever is greater) of any Indebtedness assumed by the Company or any Subsidiary in connection with such Acquisition, (iv) all additional purchase price amounts in the form of earnouts and other contingent obligations that should be recorded on the financial statements of the Company and its Subsidiaries in accordance with GAAP in connection with such Acquisition, (v) all amounts paid in respect of covenants not to compete, consulting agreements that should be recorded on the financial statements of the Company and its Subsidiaries in accordance with GAAP, and other affiliated contracts in connection with such Acquisition, and (vi) the aggregate fair market value of all other consideration (other than Equity Interests of the Company) given by the Company or any Subsidiary in connection with such Acquisition as reasonably determined by the Company in good faith; provided that the Cost of Acquisition shall not include the purchase price of floored vehicles acquired in connection with such Acquisition. For purposes of determining the Cost of Acquisition for any transaction, the Equity Interests of the Company or any Subsidiary shall be valued in accordance with GAAP.

“Covered Entity” has the meaning specified in Section 10.22(b).

“Credit Extension” means each of the following: (a) a Revolving Borrowing, (b) an L/C Credit Extension, (c) a New Vehicle Floorplan Borrowing and (d) a Used Vehicle Floorplan Borrowing.

“Daily Simple SOFR” means:

(a) with respect to a Daily Simple SOFR Loan, the rate per annum equal to the Daily Simple SOFR Published Rate two Business Days prior to the date of determination; provided that if the rate is not published on such date of determination then Daily Simple SOFR means the Daily Simple SOFR Published Rate on the first Business Day immediately prior thereto, in each case, plus the SOFR Adjustment; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to Daily Simple SOFR Published Rate on such date;

(c) provided that if Daily Simple SOFR determined in accordance with either of the foregoing provisions (a) or (b) of this definition would otherwise be less than zero, Daily Simple SOFR shall be deemed zero for purposes of this Agreement.

“Daily Simple SOFR Committed Loan” means a Revolving Committed Loan, a New Vehicle Floorplan Committed Loan or a Used Vehicle Floorplan Committed Loan, as the context may require, that bears interest at a rate based on Daily Simple SOFR.

“Daily Simple SOFR Loan” means a Daily Simple SOFR Committed Loan or a Revolving Swing Line Loan, a New Vehicle Floorplan Swing Line Loan or a Used Vehicle Floorplan Swing Line Loan that, in each case, bears interest at a rate based on Daily Simple SOFR.

“Daily Simple SOFR Published Rate” with respect to any applicable determination date means the SOFR published on such date on the Federal Reserve Bank of New York’s website (or any successor source).

“Daily Simple SOFR Replacement Date” has the meaning specified in Section 3.03(b).

“Debtor Relief Laws” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

“Deemed Floored” means, with respect to each New Vehicle, the date a New Vehicle Floorplan Borrowing is deemed to be made by a New Vehicle Floorplan Lender, including the New Vehicle Floorplan Swing Line Lender, under the New Vehicle Floorplan Facility.

“Deemed To Be A Mileage Vehicle” means, with respect to any New Vehicle which has been Deemed Floored, the date such New Vehicle is deemed to be a Demonstrator, Rental Vehicle or other mileage New Vehicle under the New Vehicle Floorplan Facility, which such date may be the same day as, or a date after, the date such New Vehicle is Deemed Floored.

“Default” means any event or condition that constitutes a Revolving/Used Vehicle Event of Default or a New Vehicle Event of Default or that, with the giving of any notice, the passage of time, or both, would be a Revolving/Used Vehicle Event of Default or a New Vehicle Event of Default.

“Default Rate” means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans plus (iii) 2% per annum; provided, however, that with respect to a ~~Eurodollar Rate~~ Daily Simple SOFR Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum, and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate plus 2% per annum.

“Defaulting Lender” means, subject to Section 2.27(b), any Lender that, (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder, unless such Lender notifies the Administrative Agent and the Company in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any L/C Issuer, any Swing Line Lender, or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swing Line Loans) within two Business Days of the date when due, (b) has notified the Company, the Administrative Agent, any L/C Issuer, or any Swing Line Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Company, to confirm in writing to the Administrative Agent and the Company that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Company) or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.27(b)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Company, each L/C Issuer, each Swing Line Lender and each other Lender promptly following such determination.

“Designated Escrow Subsidiary” means a wholly-owned Subsidiary that is formed by the Company or any of its Subsidiaries for the sole purpose of incurring Indebtedness the proceeds of which



will be subject to an escrow or other similar arrangement; provided that upon the termination of all such escrow or similar arrangements (but in any event no later than the consummation of the applicable Acquisition), such Subsidiary shall cease to constitute a “Designated Escrow Subsidiary” hereunder and shall merge with and into the Company or one of its Restricted Subsidiaries. Prior to its merger with and into such Person, the Designated Escrow Subsidiary shall not own, hold or otherwise have any interest in any material assets other than the proceeds of the applicable Indebtedness incurred by the Designated Escrow Subsidiary and any cash or cash equivalents invested in such Designated Escrow Subsidiary to cover interest and premium in respect of such Indebtedness.

“Dividing Person” has the meaning assigned to it in the definition of “Division.”

“Division” means the division of the assets, liabilities and/or obligations of a Person (the “Dividing Person”) among two or more Persons (whether pursuant to a “plan of division” or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

“Demonstrator” means a New Vehicle that (i) has not been previously titled (other than to a New Vehicle Borrower in accordance with applicable law), (ii) is the then current model year or last model year, (iii) has an odometer reading of less than 7500 miles and (iv) is designated by the applicable New Vehicle Borrower as such.

“Designated Jurisdiction” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith and including any disposition of property pursuant to a Division.

“Disposition Proceeds” means, with respect to any Disposition, as at the date of such Disposition, the sum of the following (without duplication): (i) the amount of any cash and fair market value of other property received as consideration in connection with such Disposition, (ii) all consideration amounts in the form of earnouts and other contingent obligations that should be recorded on the financial statements of the Company and its Subsidiaries in accordance with GAAP in connection with such Disposition, (iii) all amounts received in respect of covenants not to compete, consulting agreements that should be recorded on the financial statements of the Company and its Subsidiaries in accordance with GAAP, and other affiliated contracts in connection with such Disposition, and (iv) the aggregate fair market value of all other consideration received by the Company or any Subsidiary in connection with such Disposition; provided that the Disposition Proceeds shall not include (a) the sale price of floored Vehicles disposed of in connection with such Disposition or (b) any amount used to pay off Liens (other than Liens created by the Loan Documents) on any property disposed of in connection with such Disposition.

“Dollar” and “\$” mean lawful money of the United States.

“Domestic Subsidiary” means any Subsidiary that is not a Foreign Subsidiary.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a Subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

“Electronic Record” and “Electronic Signature” shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

“Eligible Accounts” means the Accounts, other than Contracts-in-Transit, of the Company and the Subsidiary Guarantors, which Accounts arise from the sale, lease or license of goods or rendition of services in the ordinary course of business;

provided that (a) Eligible Accounts shall not (unless otherwise agreed to by the Administrative Agent) include any Account:

(i) with respect to which any of the representations, warranties, covenants, and agreements contained in the Loan Documents are incorrect or have been breached in any material respect;

(ii) except as provided in clause (b)(viii) below, with respect to which either the perfection, enforceability, or validity of the Administrative Agent’s Liens in such Account, or the Administrative Agent’s right or ability to obtain direct payment to the Administrative Agent of the proceeds of such Account, is governed by any federal, state, or local statutory requirements other than those of the UCC;

(iii) owed by an Account Debtor which is obligated to the Company or the applicable Subsidiary representing Accounts the aggregate unpaid balance of which exceeds twenty-five percent (25%) of the aggregate unpaid balance of all Accounts owed to the Company or the applicable Subsidiary at such time by all of the Company’s or the applicable Subsidiary’s Account Debtors, but only to the extent of such excess; or

(iv) that is not subject to the Administrative Agent’s Liens which are perfected as to such Accounts, or that is subject to any other Lien whatsoever other than Borrowing Base Permitted Liens; and

provided, further, that (b) the following Accounts shall not be Eligible Accounts to the extent (but only to the extent) that the aggregate Net Book Value of all such Accounts constitutes more than 10% of the Net Book Value of all otherwise Eligible Accounts:

(i) any Account with respect to which more than 90 days have elapsed since the date of the original invoice therefor or which is more than 60 days past due;

(ii) any Account with respect to which Account (or any other Account due from such Account Debtor), in whole or in part, a check, promissory note, draft, trade acceptance or other instrument for the payment of money has been received, presented for payment and returned uncollected for any reason;

(iii) any Account that represents a progress billing (as hereinafter defined) or as to which the Company or any Subsidiary has extended the time for payment without the consent of the Administrative Agent; for the purposes hereof, “progress billing” means any invoice for goods sold or leased or services rendered under a contract or agreement pursuant to which the Account Debtor’s obligation to pay such invoice is conditioned upon the Company’s or the applicable Subsidiary’s completion of any further performance under the contract or agreement;

(iv) any Account with respect to which any one or more of the following events has occurred to the Account Debtor on such Account: death or judicial declaration of incompetency of an Account Debtor who is an individual; the filing by or against the Account Debtor of a request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication

as a bankrupt, winding-up, or other relief under Debtor Relief Laws; the making of any general assignment by the Account Debtor for the benefit of creditors; the appointment of a receiver or trustee for the Account Debtor or for any of the assets of the Account Debtor, including, without limitation, the appointment of or taking possession by a "custodian," as defined in the Bankruptcy Code of the United States; the institution by or against the Account Debtor of any other type of insolvency proceeding (under Debtor Relief Laws or otherwise) or of any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against, or winding up of affairs of, the Account Debtor; the sale, assignment, or transfer of all or any material part of the assets of the Account Debtor; the nonpayment generally by the Account Debtor of its debts as they become due; or the cessation of the business of the Account Debtor as a going concern;

(v) any Account owed by an Account Debtor which: (1) does not maintain its chief executive office in the United States or Canada; (2) is not organized under the laws of the United States, Canada or any state or province thereof; (3) is not, if a natural person, a citizen of the United States or Canada residing therein; or (4) is a Governmental Authority of any foreign country or sovereign state, or of any state, province, municipality, or other political subdivision thereof;

(vi) any Account owed by an Account Debtor which is an Affiliate, officer, director or employee of the Company or any Subsidiary;

(vii) any Account owed by an Account Debtor to which the Company or any Subsidiary is indebted in any way, or with respect to which the Company or such Subsidiary has knowledge or notice that such Account is subject to any right of setoff or recoupment by the Account Debtor (including, without limitation, all Accounts that are subject to any agreement encumbering or limiting in any manner the Company's or any Subsidiary's access to such Accounts), unless the Account Debtor has entered into an agreement acceptable to the Administrative Agent to waive setoff rights; or if the Account Debtor thereon has disputed liability or made any claim with respect to any other Account due from such Account Debtor, but in each such case only to the extent of such indebtedness, setoff, recoupment, dispute, or claim;

(viii) any Account owed by any Governmental Authority, unless the Federal Assignment of Claims Act of 1940, as amended (31 U.S.C. § 3727 et seq.), and any other steps necessary to perfect the Administrative Agent's Liens therein, have been complied with to the Administrative Agent's satisfaction with respect to such Account;

(ix) any Account owed by any Governmental Authority and as to which the Administrative Agent determines that its Lien therein is not or cannot be perfected;

(x) any Account which represents a sale on a bill-and-hold, guaranteed sale, sale and return, sale on approval, consignment, or other repurchase or return basis;

(xi) any Account which is evidenced by a promissory note or other instrument or by chattel paper;

(xii) any Account with respect to which the Account Debtor is located in any state requiring the filing of a Notice of Business Activities Report or similar report in order to permit the Company or any Subsidiary to seek judicial enforcement in such state of payment of such Account, unless the Company or any Subsidiary has qualified to do business in such state or has filed a Notice of Business Activities Report or equivalent report for the then current year;

(xiii) any Account that arises out of a sale not made in the ordinary course of the Company's or the applicable Subsidiary's business or out of finance or similar charges;

(xiv) any Account with respect to which the goods giving rise to such Account have not been shipped and delivered to and accepted by the Account Debtor or the services giving rise to such Account have not been performed by the Company or the applicable Subsidiary and, if

applicable, accepted by the Account Debtor, or the Account Debtor revokes its acceptance of such goods or services;

(xv) any Account in which the payment thereof has been extended beyond 90 days from the date of the original invoice thereof, the Account Debtor has made a partial payment, or such Account arises from a sale on a cash-on-delivery basis; or

(xvi) any Account which includes a billing for interest, fees or late charges, provided that ineligibility shall be limited to the extent of such billing.

The Company, by including an Account in any computation of the Borrowing Base, shall be deemed to represent and warrant to the Administrative Agent and the Lenders that (y) such Account is not of the type described in any of (a)(i) through (iv) above and (z) at least 90% of the Accounts included as Eligible Accounts in the computation of such Borrowing Base are not of the type described in any of (b)(i) through (xvi) above; and if any Account at any time ceases to be an Eligible Account, then such Account shall promptly be excluded by the Company from the calculation of Eligible Accounts. If the Administrative Agent or the Required Lenders have reasonable grounds to believe that an Account is of the type described in any of clauses (a)(i) through (iv) above or that any Account or Accounts cause the calculation of the Borrowing Base to violate proviso (b) above, the Administrative Agent shall inform the Company of the grounds for such belief and shall request confirmation by the Company of the eligibility of such Account or Accounts. Prior to confirmation of the eligibility thereof by the Company, such Account or Accounts shall not be considered Eligible Accounts and no representation and warranty shall have been deemed made with respect thereto.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 10.06(b)(iii), and (v) (subject to such consents, if any, as may be required under Section 10.06(b)(iii)).

“Eligible Borrowing Base Real Estate” means any real property of the Company or a Subsidiary Guarantor;

provided that Eligible Borrowing Base Real Estate shall not include any real property unless:

(i) the property is owned in fee simple by a Borrower or a Subsidiary Guarantor,

(ii) the property is not subject to any lien or encumbrances (other than Borrowing Base Permitted Liens),

(iii) the property is utilized by or leased to a Borrower or Subsidiary Guarantor that is a vehicle dealership or is an operating entity involved in the sale, repair, service or storage of auto vehicles,

(iv) the address(es), tenant(s), value(s) and date(s) included for such Eligible Borrowing Base Real Estate are detailed quarterly in a revolving borrowing base certificate (and, if applicable, the Pro Forma Revolving Borrowing Base Certificate first reflecting such property) delivered to the Administrative Agent,

(v) the Administrative Agent has received (A) a FIRREA-conforming appraisal for such property, which appraisal shall be delivered by the Administrative Agent to the Lenders upon receipt by the Administrative Agent, and (B) a Phase I (or, if necessary, a Phase II) environmental report for such property,

(vi) such Eligible Borrowing Base Real Estate is located in a state within the United States or in the District of Columbia, and

(vii) if such real property has been deemed Eligible Borrowing Base Real Estate for 12 months or longer (a) then with respect to each anniversary of the date such property was first

deemed Eligible Borrowing Base Real Estate, the Administrative Agent has received (x) an updated FIRREA-conforming appraisal as of such date, which appraisal shall be delivered to the Lenders by the Administrative Agent upon receipt by the Administrative Agent, (y) if requested by the Administrative Agent in its sole discretion, an updated Phase I (or if necessary, a Phase II) environmental report and (z) a title report for such property and (b) the Administrative Agent, in its reasonable discretion, has not determined that such property is unacceptable or unmortgageable. Such determination shall be made each 90 days after such 12-month period and which determination shall take into account whether there is sufficient closing cost liquidity and market access available to the Company to consummate a mortgage financing and recordation in the open market; provided that if the Administrative Agent deems such real property not to be acceptable or mortgageable, the Administrative Agent shall notify the Company in writing of such determination and such real property shall cease to be Eligible Borrowing Base Real Estate 90 days after delivery of such written notice to the Company of such determination by the Administrative Agent.

“Eligible Contracts-in-Transit” means the Contracts-in-Transit of the Company and the Subsidiary Guarantors;

provided that (a) Eligible Contracts-in-Transit shall not (unless otherwise agreed to by the Administrative Agent) include any Contract-in-Transit:

- (i) with respect to which any of the representations, warranties, covenants, and agreements contained in the Loan Documents are incorrect or have been breached in any material respect;
- (ii) with respect to which either the perfection, enforceability, or validity of the Administrative Agent’s Liens in such Contract-in-Transit, or the Administrative Agent’s right or ability to obtain direct payment to the Administrative Agent of the proceeds of such Contract-in-Transit, is governed by any federal, state, or local statutory requirements other than those of the UCC; or
- (iii) that is not subject to the Administrative Agent’s Liens which are perfected as to such Contract-in-Transit, or that is subject to any other Lien whatsoever other than Borrowing Base Permitted Liens; and

provided, further, that (b) the following Contracts-in-Transit shall not be Eligible Contracts-in-Transit to the extent (but only to the extent) that the aggregate Net Book Value of all such Contracts-in-Transit constitutes more than 10% of the Net Book Value of all otherwise Eligible Contracts-in-Transit:

- (i) any Contract-in-Transit with respect to which more than 12 days have elapsed since the sale of the applicable Vehicle;
- (ii) any Contract-in-Transit with respect to which Contract-in-Transit (or any other Contract-in-Transit due from such financial institution), in whole or in part, a check, promissory note, draft, trade acceptance or other instrument for the payment of money has been received, presented for payment and returned uncollected for any reason;
- (iii) any Contract-in-Transit with respect to which any one or more of the following events has occurred to the respective financial institution: the filing by or against the financial institution of a request or petition for insolvency, liquidation, reorganization, arrangement, adjustment of debts, adjudication as a bankrupt, winding-up, or other relief under Debtor Relief Laws; the making of any general assignment by the financial institution for the benefit of creditors; the appointment of a receiver or trustee for the financial institution or for any of the assets of the financial institution, including, without limitation, the appointment of or taking possession by a “custodian,” as defined in the Bankruptcy Code of the United States; the institution by or against the financial institution of any other type of insolvency proceeding (under Debtor Relief Laws or otherwise) or of any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against, or winding up of affairs of, the financial institution; the sale,

assignment, or transfer of all or any material part of the assets of the financial institution; the nonpayment generally by the financial institution of its debts as they become due; or the cessation of the business of the financial institution as a going concern;

(iv) any Contract-in-Transit provided by a financial institution which is an Affiliate of the Company or any Subsidiary;

(v) any Contract-in-Transit which is subject to any right of setoff or recoupment by the financial institution (including, without limitation, all Contracts-in-Transit that are subject to any agreement encumbering or limiting in any manner the Company's or any Subsidiary's access to such Contracts-in-Transit), unless the financial institution has entered into an agreement acceptable to the Administrative Agent to waive setoff rights; or if the financial institution has disputed liability or made any claim with respect to any other Contract-in-Transit due from such financial institution, but in each such case only to the extent of such indebtedness, setoff, recoupment, dispute, or claim;

(vi) any Contract-in-Transit that arises out of a sale not made in the ordinary course of the Company's or the applicable Subsidiary's business; or

(vii) any Contract-in-Transit with respect to which the Vehicle giving rise to such Contract-in-Transit has not been delivered to and accepted by the applicable customer.

The Company, by including a Contract-in-Transit in any computation of the Borrowing Base, shall be deemed to represent and warrant to the Administrative Agent and the Lenders that (y) such Contract-in-Transit is not of the type described in any of (a)(i) through (iii) above and (z) at least 90% of the Contracts-in-Transit included as Eligible Contracts-in-Transit in the computation of such Borrowing Base are not of the type described in any of (b)(i) through (x) above; and if any Contract-in-Transit at any time ceases to be an Eligible Contract-in-Transit, then such Contract-in-Transit shall promptly be excluded by the Company from the calculation of Eligible Contracts-in-Transit. If the Administrative Agent or the Required Lenders have reasonable grounds to believe that a Contract-in-Transit is of the type described in any of clauses (a)(i) through (iv) above or that any Contract-in-Transit or Contracts-in-Transit cause the calculation of the Borrowing Base to violate proviso (b) above, the Administrative Agent shall inform the Company of the grounds for such belief and shall request confirmation by the Company of the eligibility of such Contract-in-Transit or Contracts-in-Transit. Prior to confirmation of the eligibility thereof by the Company, such Contract-in-Transit or Contracts-in-Transit shall not be considered Eligible Contracts-in-Transit and no representation and warranty shall have been deemed made with respect thereto.

"Eligible Equipment" means Equipment of the Company or a Subsidiary Guarantor;

provided that (a) Eligible Equipment shall not (unless otherwise agreed to by the Administrative Agent) include any Equipment:

(i) that is not legally owned by the Company or a Subsidiary; or

(ii) that is not subject to the Administrative Agent's Liens which are perfected as to such Equipment, or that is subject to any other Lien whatsoever other than Borrowing Base Permitted Liens; and

provided, further, that (b) the following Equipment shall not be Eligible Equipment to the extent (but only to the extent) that the aggregate Net Book Value of all such Equipment constitutes more than 10% of the Net Book Value of all otherwise Eligible Equipment:

(i) Equipment that is not in good working condition for its intended use or for sale; or

(ii) Equipment that is located outside the United States or at a location other than a place of business of the Company or a Subsidiary.

The Company, by including Equipment in any computation of the Borrowing Base, shall be deemed to represent and warrant to the Administrative Agent and the Lenders that (y) such Equipment is not of the type described in any of (a)(i) through (ii) above and (z) at least 90% of the Equipment included as Eligible Equipment in the computation of such Borrowing Base is not of the type described in any of (b)(i) through (ii) above, and if any Equipment at any time ceases to be Eligible Equipment, then such Equipment shall promptly be excluded by the Company from the calculation of Eligible Equipment. If the Administrative Agent or the Required Lenders have reasonable grounds to believe that an item of Equipment is of the type described in any of clauses (a)(i) through (ii) above or that any item of Equipment causes the calculation of the Borrowing Base to violate proviso (b) above, the Administrative Agent shall inform the Company of the grounds for such belief and shall request confirmation by the Company of the eligibility of such Equipment. Prior to confirmation of the eligibility thereof by the Company, such Equipment shall not be considered Eligible Equipment and no representation and warranty shall have been deemed made with respect thereto.

“Eligible New Vehicle Inventory” means New Vehicles each of which is an automobile or light-duty truck and is owned by a New Vehicle Borrower;

provided that Eligible New Vehicles shall not (unless otherwise agreed to by the Administrative Agent) include any New Vehicle unless:

- (i) the New Vehicle is subject to a perfected, first priority Lien in favor of the Administrative Agent for the benefit of the Secured Parties pursuant to the Security Instruments, free of any title defect or other Lien other than Borrowing Base Permitted Liens;
- (ii) except as set forth in Section 6.13, the New Vehicle is located at one of the locations identified in Schedule 5.18 (as updated from time to time in accordance with Section 6.13); and
- (iii) the New Vehicle is held for sale in the ordinary course of a New Vehicle Borrower’s business (or is a Rental Vehicle, Demonstrator or Fleet Vehicle) and is of good and merchantable quality.

The Company, by including a New Vehicle in any computation of the Revolving Borrowing Base, shall be deemed to represent and warrant to the Administrative Agent and the Lenders that such Vehicle satisfies each of the requirements set forth in (i) through (iii) above. If the Administrative Agent or the Required Lenders have reasonable grounds to believe that a New Vehicle does not satisfy any of clauses (i) through (iii) above, the Administrative Agent shall inform the Company of the grounds for such belief and shall request confirmation by the Company of the eligibility of such New Vehicle. Prior to confirmation of the eligibility thereof by the Company, such New Vehicle shall not be considered Eligible New Vehicle Inventory and no representation and warranty shall have been deemed made with respect thereto.

“Eligible Parts and Accessories Inventory” means Inventory consisting of parts and accessories (but specifically excluding Vehicles and parts and accessories affixed thereto), which Inventory is owned by the Company or a Subsidiary that is a Guarantor;

provided that (a) Eligible Parts and Accessories Inventory shall not (unless otherwise agreed to by the Administrative Agent) include any Inventory:

- (i) that is not owned by the Company or a Subsidiary that is a Guarantor;
- (ii) that is not subject to the Administrative Agent’s Liens which are perfected as to such Inventory, or that is subject to any other Lien whatsoever, other than Borrowing Base Permitted Liens;
- (iii) that is not currently either usable or salable, at prices approximating at least cost, in the normal course of the Company’s or the applicable Subsidiary’s business, or that is slow moving or stale;

- (iv) that is obsolete; or
- (v) that is Inventory placed on consignment; and

provided further that (b) the following Inventory shall not be Eligible Parts and Accessories Inventory to the extent (but only to the extent) that the aggregate Net Book Value of all such Inventory constitutes more than 10% of the Net Book Value of all otherwise Eligible Parts and Accessories Inventory:

- (vi) Inventory that does not consist of finished goods;
- (vii) Inventory that consists of raw materials, work-in-process, chemicals (other than gas, oil and grease), samples, prototypes, supplies, or packing and shipping materials;
- (viii) Inventory that is not in good condition, is unmerchantable or does not meet all standards imposed by any Governmental Authority, having regulatory authority over such goods, their use or sale;
- (ix) Inventory that is returned or repossessed or used goods taken in trade;
- (x) Inventory that is located outside the United States of America or Canada (or that is in-transit from vendors or suppliers); or
- (xi) Inventory that is located in a public warehouse or in possession of a bailee, if the warehouseman or the bailee has not delivered to the Administrative Agent, if requested by the Administrative Agent, a subordination agreement in form and substance reasonably satisfactory to the Administrative Agent.

The Company, by including Inventory in any computation of the Borrowing Base, shall be deemed to represent and warrant to the Administrative Agent and the Lenders that (y) such Inventory is not of the type described in any of (a)(i) through (v) above and (z) at least 90% of the Inventory included as Eligible Inventory in the computation of such Borrowing Base is not of the type described in any of (b)(i) through (vi) above, and if any Inventory at any time ceases to be Eligible Parts and Accessories Inventory, such Inventory shall promptly be excluded by the Company from the calculation of Eligible Parts and Accessories Inventory. If the Administrative Agent or the Required Lenders have reasonable grounds to believe that an item of Inventory is of the type described in any of clauses (a)(i) through (v) above or that any item of Inventory causes the calculation of the Borrowing Base to violate proviso (b) above, the Administrative Agent shall inform the Company of the grounds for such belief and shall request confirmation by the Company of the eligibility of such Inventory. Prior to confirmation of the eligibility thereof by the Company, such Inventory shall not be considered Eligible Parts and Accessories Inventory and no representation and warranty shall have been deemed made with respect thereto.

“Eligible Used Vehicle Inventory” means Used Vehicles that are automobiles or light-duty trucks and are owned by a Used Vehicle Borrower;

provided that Eligible Used Vehicle Inventory shall not (unless otherwise agreed to by the Administrative Agent) include any Used Vehicle unless:

- (i) the Used Vehicle is subject to a perfected, first priority Lien in favor of the Administrative Agent for the benefit of the Secured Parties pursuant to the Security Instruments, free from any title defect or other Lien other than Borrowing Base Permitted Liens;
- (ii) the Used Vehicle is properly titled in a Used Vehicle Borrower’s name or the certificate of title for such Used Vehicle is endorsed in blank by the prior owners and such Used Vehicle Borrower physically holds such certificates of title (or such Used Vehicle Borrower has, in accordance with its standard policies and procedures, initiated the process by which the requirements of this clause (b) will be satisfied);



(iii) except as set forth in Section 6.13, the Used Vehicle is located at one of the locations identified in Schedule 5.18 (as updated from time to time in accordance with Section 6.13); and

(iv) the Used Vehicle is held for sale in the ordinary course of a Used Vehicle Borrower's business and is of good and merchantable quality.

The Company, by including a Used Vehicle in any computation of the Used Vehicle Floorplan Borrowing Base or the Revolving Borrowing Base, shall be deemed to represent and warrant to the Administrative Agent and the Lenders that (1) such Vehicle satisfies each of the requirements set forth in (i) through (iv) above and (2) such Vehicle is not a Demonstrator, Rental Vehicle or other mileage New Vehicle, or any other New Vehicle. If the Administrative Agent or the Required Lenders have reasonable grounds to believe that a Used Vehicle does not satisfy any of clauses (i) through (iv) above or the foregoing clause (2), the Administrative Agent shall inform the Company of the grounds for such belief and shall request confirmation by the Company of the eligibility of such Used Vehicle. Prior to confirmation of the eligibility thereof by the Company, such Used Vehicle shall not be considered Eligible Used Vehicle Inventory and no representation and warranty shall have been deemed made with respect thereto.

“Environmental Laws” means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Company, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equipment” has the meaning given such term in Section 9-102 of the UCC.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with the Company within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Company or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Company or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate,

the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Company or any ERISA Affiliate.

“Escrow and Security Agreement” means that certain Third Amended and Restated Escrow and Security Agreement dated as of the Closing Date made by the Company and certain Loan Parties in favor of the Administrative Agent for the benefit of the Secured Parties, substantially in the form of Exhibit I attached hereto, as supplemented from time to time by the execution and delivery of Joinder Agreements pursuant to Section 6.14, and as otherwise supplemented, amended, or modified from time to time.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Eurodollar Rate” means:

~~(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the London Interbank Offered Rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for U.S. Dollars for a period equal in length to such Interest Period (“LIBOR”) as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period;~~

~~(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to LIBOR, at or about 11:00 a.m., London time determined two Business Days prior to such date for U.S. Dollar deposits with a term of one month commencing that day; and~~

~~(c) if the Eurodollar Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement;~~

~~provided that to the extent a comparable or successor rate is approved by the Administrative Agent in connection herewith, the approved rate shall be applied in a manner consistent with market practice; provided, further that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.~~

~~A Loan bearing interest at the Eurodollar Rate may be (a) borrowed on any day (whether or not it is the first day of the applicable Interest Period) and (b) repaid or converted to a different Type of Loan on any day (whether or not it is the last day of an Interest Period) without giving rise to any additional payment for “break funding” losses.~~

~~If such a comparable or successor rate is adopted, the Administrative Agent will provide notice thereof to the Company.~~

~~“Eurodollar Rate Committed Loan” means a Revolving Committed Loan, a New Vehicle Floorplan Committed Loan or a Used Vehicle Floorplan Committed Loan, as the context may require, that bears interest at a rate based on clause (a) of the definition of “Eurodollar Rate.”~~

~~“Eurodollar Rate Loan” means a Eurodollar Rate Committed Loan or a Revolving Swing Line Loan, a New Vehicle Floorplan Swing Line Loan or a Used Vehicle Floorplan Swing Line Loan that, in each case, bears interest at a rate based on clause (a) of the definition of “Eurodollar Rate.”~~

“Event of Default” means either a Revolving/Used Vehicle Event of Default or a New Vehicle Event of Default.

“Excluded Property” means collectively: (a) any of the following, to the extent (but only to the extent) that any Franchise Agreement or Framework Agreement prohibits the granting of a security interest in such property: any Equity Interests of any Subsidiary owning (directly or indirectly) and/or operating a Franchise, the proceeds from the sale of any Franchise Agreement or Framework Agreement or any Equity Interests of any Subsidiary, any Framework Agreements, Franchise Agreements or other contracts or agreements with a manufacturer or distributor of Vehicles relating to the ownership or operation of any Franchise, any contract rights or other privileges (including, without limitation, any licenses) arising pursuant to any Framework Agreement, Franchise Agreement or other such agreement and any other assets (other than Vehicles, Borrowing Base Assets and proceeds of Vehicles and Borrowing Base Assets); (b) any contract, license, lease or agreement (other than any contract that is Excluded Property pursuant to clause (a) above) in which any Loan Party has any right, title or interest if and to the extent such contract or agreement contains a or is subject to a contractual provision or other restriction on assignment; (c) any “intent-to-use” trademark applications filed in the United States Patent and Trademark Office for which a statement of use has not been filed (but only until such statement is filed); provided, however, that “Excluded Property” shall not include any common law rights with respect to any Trademark described in or subject to such “intent to use” application; (d) any real property, fixtures, related real property rights, related contracts and proceeds of the foregoing (including, without limitation, insurance proceeds in respect of the foregoing), that in each case secures Permitted Real Estate Debt to the extent that a grant of a security interest thereon would conflict with or result in a violation of the terms of such Permitted Real Estate Debt; and (e) any real property, fixtures, related real property rights, related contracts and proceeds of the foregoing (including, without limitation, insurance proceeds in respect of the foregoing), that in each case secures Indebtedness permitted by Section 7.01(s) to the extent that a grant of a security interest thereon would conflict with or result in a violation of the terms of such Indebtedness;

provided that any of the foregoing exclusions in clause (a) or (b) shall not apply if (x) such prohibition has been waived or such other Person has otherwise consented to the creation hereunder of a security interest in such agreement, or (y) such prohibition would be rendered ineffective pursuant to Section 9-406, 9-407 or 9-408 of Article 9 of the UCC, as applicable and as then in effect in any relevant jurisdiction, or any other applicable law or principles of equity; and

provided further that immediately upon the ineffectiveness, lapse or termination of any such prohibition, such Loan Party shall be deemed to have granted a security interest in all its rights, title and interests in and to such contract or agreement.

“Excluded Swap Obligation” means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Loan Party of, the joint and several liability of such Loan Party for, or the grant by such Loan Party of a security interest to secure, such Swap Obligation (or any Guarantee thereof or joint and several liability therefor) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to Section 10.20 and any other “keepwell, support or other agreement” for the benefit of such Loan Party and any and all guarantees of such Loan Party’s Swap Obligations by other Loan Parties) at the time the Guarantee of such Loan Party, the joint and several liability of such Loan Party or a grant by such Loan Party of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes excluded in accordance with the first sentence of this definition. The parties hereto agree that if any Loan Party has granted a Lien on any Collateral of such Loan Party pursuant to any Collateral Document, the obligations secured by such Lien shall exclude any Excluded Swap Obligation with respect to such Loan Party, and such Collateral Document is hereby deemed amended to effect such exclusion.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the ~~Borrower Company~~ under Section 10.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii) or (iii) or (c), amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.01(e) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

“Existing Credit Agreement” has the meaning given such term in the recitals hereto.

“Existing Letters of Credit” means those Letters of Credit described on Schedule 2.03.

“Extending Lender” has the meaning specified in Section 2.23(e).

“Existing Maturity Date” means the Maturity Date then in effect hereunder.

“Facilities” means, collectively, the Revolving Credit Facility, the New Vehicle Floorplan Facility and the Used Vehicle Floorplan Facility.

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities entered into in connection with the implementation of the foregoing.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent, and (c) if the Federal Funds Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Fee Letter” means the letter agreement, dated August 8, 2019 among the Company, the Administrative Agent and the Arranger.

“Fleet Vehicle” means one of a group of New Vehicles sold to a Person (e.g., a rental car agency) which purchases in excess of ten (10) Vehicles per purchase contract for commercial use.

“Floored New Vehicle” means, as of any date, any New Vehicle that is (a) owned by a New Vehicle Borrower on such date and (b) for which any New Vehicle Floorplan Lender has made a New Vehicle Non-Offset Floorplan Loan on or prior to such date.

“Floorplan Commitment” means, as to each Lender, the New Vehicle Floorplan Commitment and Used Vehicle Floorplan Commitment, collectively, of such Lender.

“Floorplan Facility” means, collectively or individually, as the context may require, the New Vehicle Floorplan Facility or the Used Vehicle Floorplan Facility.

“Floorplan Loan” means any New Vehicle Floorplan Loan or any Used Vehicle Floorplan Loan.

“Floorplan Offset Amount” ~~has means, at any time, the meaning assigned thereto in~~ amount that is credited to the definition of “New Vehicle Floorplan Offset Agreement Account at such time, after giving effect to Section 2.09(b)(ii).”

“Floorplan On-line System” has the meaning set forth in Section 2.09(a).

“FMCC” means Ford Motor Credit Company, or any successor in interest to Ford Motor Credit Company.

“FMCC Collateral” means, to the extent a security interest in and to the following items of property have been granted to FMCC, (A) any item of Ford or Lincoln New Vehicle inventory if such inventory was originally acquired by any Ford or Lincoln Franchise (whether directly from a manufacturer, through dealer trade or at auction) set forth on the applicable exhibit to the FMCC Intercreditor Agreement (which Exhibit shall be considered the “FMCC Exhibit” and may be supplemented or amended from time to time in accordance with the terms of the FMCC Intercreditor Agreement) and FMCC is a party to a loan facility to provide inventory financing of Ford or Lincoln New Vehicle inventory on a VIN-specific basis to such Ford or Lincoln Franchise, (B) all accounts, instruments, monies, payment intangibles and other rights to payment (and all items in which FMCC may exercise a right of setoff or recoupment at law or in equity) which are owed by any Person to a Ford or Lincoln Franchise (or to the dealership Subsidiary that owns such Ford or Lincoln Franchise and which relate to such Ford or Lincoln Franchise) set forth on the FMCC Exhibit, (C) any inventory of repair, replacement or service parts of any Ford or Lincoln Franchise set forth on the FMCC Exhibit, (D) general intangibles of any Ford or Lincoln Franchise set forth on the FMCC Exhibit (including, without limitation, franchise rights of such Ford or Lincoln Franchise to the extent such Ford or Lincoln Franchise shall have granted a security interest therein to FMCC, but excluding any equity or other ownership interests in any direct or indirect Subsidiary of the Company), and (E) any proceeds of the foregoing.

“FMCC Intercreditor Agreement” means an intercreditor agreement, including any such agreement entered into after December 4, 2014, between FMCC and the Administrative Agent with respect to FMCC Collateral and is otherwise acceptable to the Administrative Agent.

“Foreign Lender” means any Lender that is organized under the Laws of a jurisdiction other than that in which the Company is resident for tax purposes (including such a Lender when acting in the capacity of an L/C Issuer). For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Foreign Subsidiary” means (i) any Subsidiary not organized under the laws of the United States, any state thereof, or the District of Columbia, (ii) any Subsidiary of an entity described in the preceding clause (i), (iii) any Subsidiary that is a disregarded entity for U.S. federal income tax purposes that owns the capital stock or indebtedness of one or more Foreign Subsidiaries or (iv) a Subsidiary substantially all of the assets of which are capital stock or indebtedness of one or more Foreign Subsidiaries.

“Fourth Amendment” means that certain Fourth Amendment to Third Amended and Restated Credit Agreement, dated as of May 25, 2022, among the Company, the other Borrowers party thereto, the Guarantors party thereto, the Administrative Agent and the Lenders party thereto.

“Fourth Amendment Effective Date” has the meaning specified in the Fourth Amendment.

“Framework Agreement” means a framework agreement, in each case between a Loan Party and a manufacturer or distributor of Vehicles.

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“Franchise” means any division of a Subsidiary that holds (or the portion of the assets of such Subsidiary that constitutes) the assets of a particular franchise for the sale of New Vehicles and/or Used Vehicles. A Subsidiary may own and operate one or more than one Franchise. (By way of example, and without limiting the generality of the foregoing, Asbury Automotive St. Louis, L.L.C. is a Subsidiary that, as of the date hereof, owns a BMW Franchise and an Infiniti Franchise, among others.)

“Franchise Agreement” means any dealer franchise agreement, dealer sales and service agreement or similar agreement.

“Fronting Exposure” means, at any time there is a Defaulting Lender, (a) with respect to an L/C Issuer, such Defaulting Lender’s Applicable Percentage of the outstanding L/C Obligations with respect to Letters of Credit issued by such L/C Issuer other than L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swing Line Lender, such Defaulting Lender’s Applicable Percentage of Swing Line Loans other than Swing Line Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

“Fund” means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness (the “primary obligations”) payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such primary obligations, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such primary obligations of the payment or performance of such primary obligations, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such primary obligations, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such primary obligations of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any primary obligations of any primary obligor, whether or not such primary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such primary obligation to obtain any such Lien). The amount of any Guarantee (other than a Guarantee of the type described in clause (b) above) shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably

anticipated liability in respect thereof as reasonably determined by the guaranteeing Person in good faith. The amount of any Guarantee of the type described in clause (b) above shall be deemed to be an amount equal to the lesser of (x) the fair market value of the property subject to such Lien and (y) the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning. The term “Guarantee” shall not include endorsements of instruments for deposit or collection in the ordinary course of business.

“Guaranties” means, collectively, the Company Guaranty and the Subsidiary Guaranty.

“Guarantors” means, collectively, (a) the Company, (b) the Subsidiary Guarantors, and (c) with respect to (i) Obligations owing by any Loan Party or any Subsidiary of a Loan Party under any Swap Contract or any Cash Management Agreement and (ii) the payment and performance by each Specified Loan Party of its obligations under its Guarantee with respect to all Swap Obligations, each Borrower.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“Hedge Bank” means any Person that, (a) at the time it enters into a Swap Contract not prohibited under Article VI or VII, is a Lender or an Affiliate of a Lender, or (b) at the time it (or its Affiliate) becomes a Lender, is a party to a Swap Contract not prohibited under Article VI or VII, in each case, in its capacity as a party to such Swap Contract.

“Increase Effective Date” has the meaning specified in Section 2.22(d).

“Immaterial Subsidiary” means each direct or indirect Subsidiary of the Company that either (a) has total assets (including Equity Interests in other Persons) of less than 2.5% of the total assets of the Company and its Subsidiaries (calculated as of the most recent fiscal period with respect to which the Administrative Agent shall have received financial statements required to be delivered pursuant to Sections 6.01(a) or (b) (or if prior to delivery of any financial statements pursuant to such Sections, then calculated based on the Audited Financial Statements) or (b) contributes less than 2.5% to Consolidated EBITDA (calculated as of the most recent fiscal period with respect to which the Administrative Agent shall have received financial statements required to be delivered pursuant to Sections 6.01(a) or (b) (or if prior to delivery of any financial statements pursuant to such Sections, then calculated based on the Audited Financial Statements). In the event that either (x) the total assets of all Immaterial Subsidiaries equals or exceed 5% of the total assets of the Company and its Subsidiaries (calculated as of the most recent fiscal period with respect to which the Administrative Agent shall have received financial statements required to be delivered pursuant to Sections 6.01(a) or (b) (or if prior to delivery of any financial statements pursuant to such Sections, then calculated based on the Audited Financial Statements) or (y) the total contribution of all Immaterial Subsidiaries to Consolidated EBITDA exceeds 5% of Consolidated EBITDA (calculated as of the most recent fiscal period with respect to which the Administrative Agent shall have received financial statements required to be delivered pursuant to Sections 6.01(a) or (b) (or if prior to delivery of any financial statements pursuant to such Sections, then calculated based on the Audited Financial Statements), as the case may be, the Company will designate Subsidiaries which would otherwise constitute Immaterial Subsidiaries to be excluded from qualifying as Immaterial Subsidiaries until the total assets and total contribution to Consolidated EBITDA of all Subsidiaries constituting Immaterial Subsidiaries are, in each case, less than or equal to such 5% thresholds.

“Impacted Loans” has the meaning specified in Section 3.03(a).

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and, in each case, not past due for more than (i) 90 days after the original specified due date thereof, or (ii) if such trade account payable has no specified due date, 120 days after the date on which such trade account payable was created);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) capital leases and Synthetic Lease Obligations;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any capital lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date. The amount of Indebtedness of the type described in clause (e) above to the extent the recourse for such Indebtedness is limited to recourse against the property subject to the Lien described in clause (e) shall be deemed to be an amount equal to the lesser of (x) the fair market value of the property subject to such Lien and (y) the outstanding amount if indebtedness secured by such Lien. The term "Indebtedness" shall not include (x) customer deposits and interest payable thereon in the ordinary course of business or (y) indebtedness to the extent that it has been defeased or satisfied and discharged in accordance with the terms of the documents governing such indebtedness; provided that (i) to the extent the deposit of assets with the applicable holders (or trustee on behalf of such holders) is required in connection with the defeasance or satisfaction and discharge of such indebtedness, such assets are limited to cash and cash equivalents and (ii) none of the assets associated with such defeasance, or any income earned on such assets, shall be included in the calculation of any financial covenant or ratio or incurrence test hereunder, any borrowing base hereunder or the Prepayment Test Amount.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

"Indemnitees" has the meaning specified in Section 10.04(b).

"Indentures" means (i) that certain Indenture, dated as of February 19, 2020 (as amended, supplemented and otherwise modified prior to the date hereof, and as further amended, supplemented or otherwise modified from time to time to the extent permitted hereunder), governing the 4.50% Senior



Notes due 2028 of the Company and (ii) that certain Indenture, dated as of February 19, 2020 (as amended, supplemented and otherwise modified prior to the date hereof, and as further amended, supplemented or otherwise modified from time to time to the extent permitted hereunder), governing the 4.75% Senior Notes due 2030 of the Company.

“Information” has the meaning specified in Section 10.07.

“Intangible Assets” means assets that are considered to be intangible assets under GAAP, including customer lists, goodwill, computer software, copyrights, trade names, trademarks, patents, franchises, licenses, unamortized deferred charges, unamortized debt discount and capitalized research and development costs.

“Interest Payment Date” means the Automatic Debit Date of each calendar month.

~~“Interest Period” means a period of approximately one month commencing on the first Business Day of each month and ending on the first Business Day of the following month.~~

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of capital stock or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested *less* any principal repayments or return of capital actually received in cash from such Investment.

“IRS” means the United States Internal Revenue Service.

“ISP” means the International Standby Practices, International Chamber of Commerce Publication No. 590 (or such later version thereof as may be in effect at the applicable time).

“Issuer Documents” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the respective L/C Issuer and the Company (or any Subsidiary) or in favor of such L/C Issuer and relating to such Letter of Credit.

“Joinder Agreement” means each Joinder Agreement, substantially in the form of Exhibit H, executed and delivered by a Subsidiary or any other Person to the Administrative Agent, for the benefit of the Secured Parties, pursuant to Section 6.14.

“Landlord Waiver” means, as to any leasehold interest of a Loan Party, a landlord waiver and consent agreement executed by the landlord of such leasehold interest, in each case in form and substance reasonably satisfactory to the Administrative Agent.

“Laws” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“L/C Advance” means, with respect to each Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Committed Borrowing.

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“L/C Issuer” means (a) Bank of America in its capacity as an issuer of Letters of Credit hereunder, or any successor to Bank of America in its capacity as an issuer of Letters of Credit hereunder and (b) not more than one additional Lender, selected by the Company and reasonably acceptable to the Administrative Agent, which consents to its appointment by the Company as an issuer of Letters of Credit hereunder and becomes an L/C Issuer hereunder pursuant to a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent and its counsel, in such Lender’s capacity as an issuer of Letters of Credit hereunder or any successor to such Lender in its capacity as an issuer of Letters of Credit hereunder. All singular references to the L/C Issuer shall mean any L/C Issuer, the L/C Issuer that has issued the applicable Letter of Credit or all L/C Issuers, as the context may require.

“L/C Obligations” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.07. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Lender” has the meaning specified in the introductory paragraph hereto and, as the context requires, includes the Swing Line Lender.

“Lender Party” and “Lender Recipient Party” means collectively, the Lenders, the Swing Line Lenders and the L/C Issuers.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Company and the Administrative Agent, which office may include any Affiliate of such Lender or any domestic or foreign branch of such Lender or such Affiliate. Unless the context otherwise requires each reference to a Lender shall include its applicable Lending Office.

“Letter of Credit” means any standby letter of credit issued hereunder providing for the payment of cash upon the honoring of a presentation thereunder and shall include the Existing Letters of Credit.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the applicable L/C Issuer.

“Letter of Credit Expiration Date” means the day that is fifteen days prior to the Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

“Letter of Credit Fee” has the meaning specified in Section 2.03(h).

“Letter of Credit Sublimit” means an amount equal to \$50,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Revolving Commitments.

~~“LIBOR” has the meaning specified in the definition of Eurodollar Rate.~~

~~“LIBOR Screen Rate” means the LIBOR quote on the applicable screen page the Administrative Agent designates to determine LIBOR (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time).~~

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance

on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“Limited Condition Acquisition” shall mean any Acquisition that (a) is not prohibited hereunder, (b) is financed in whole or in part with a substantially concurrent incurrence of Indebtedness hereunder, and (c) is not conditioned on the availability of, or on obtaining, third-party financing.

“Loan” means a Revolving Loan, a New Vehicle Floorplan Loan or a Used Vehicle Floorplan Loan, as the context may require.

“Loan Documents” means this Agreement, including schedules and exhibits hereto, each Note, each Issuer Document, each Security Instrument, the Guaranties, any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.26 of this Agreement, the Fee Letter, ~~the New Vehicle Floorplan Offset Agreement and~~ any Autoborrow Agreement, and any amendments, modifications or supplements hereto or to any other Loan Document or waivers hereof or to any other Loan Document.

“Loan Parties” means, collectively, the Company, each Vehicle Borrower, each Guarantor, and each Person (other than the Administrative Agent, any Lender or any landlord executing a Landlord Waiver) executing a Security Instrument.

“Loan Year” means each 12 month period commencing on (but excluding) the Closing Date (or an Anniversary Date) and ending on (and including) the next succeeding Anniversary Date.

~~“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.~~

“Manufacturer” means the manufacturer of, or a manufacturer-appointed wholesale distributor of, Inventory.

“Material Acquisition” means any Acquisition by the Company or any Subsidiary that (a) has a Cost of Acquisition greater than \$100,000,000, or (b) the Company has determined (in its sole discretion) to constitute a Material Acquisition.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent), or financial condition of the Company and its Subsidiaries taken as a whole; (b) a material impairment of the rights and remedies of the Administrative Agent or any Lender under any Loan Document, or of ability of the Loan Parties taken as a whole to perform their respective obligations under the respective Loan Documents to which any of them is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against the Loan Parties taken as a whole of the Loan Documents.

“Material Disposition” means any Disposition by the Company or any Subsidiary that (a) has Disposition Proceeds greater than \$75,000,000, (b) results in a decrease in the aggregate of the Revolving Borrowing Base or the Used Vehicle Floorplan Borrowing Base by more than ten percent (10%), or (c) the Company has determined (in its sole discretion ) to constitute a Material Disposition.

“Maturity Date” means the later of (a) September 25, 2024 and (b) if maturity is extended pursuant to Section 2.23, such extended maturity date as determined pursuant to such Section, provided that the “Maturity Date” with respect to any Non-Extending Lender (including with respect to the payment of Obligations owing to such Lender and the Availability Period for Loans by such Lender) shall be the latest date that such Lender has consented to as its Maturity Date pursuant to Section 2.23 (or, if such Lender has not consented to any such extension, the original Maturity Date as in effect on the Closing Date); provided further, however, that, in each case, if such date is not a Business Day, the respective Maturity Date shall be the next preceding Business Day. Except as otherwise set forth in the first proviso to this definition, references to the Maturity Date (including references to such term in the definitions of “Letter of Credit Expiration Date” and “Subordinated Indebtedness” and Section 7.01(m))

shall mean the latest date that any Lender has consented to as its Maturity Date pursuant to Section 2.23 (or, if there has been no such extension, the original Maturity Date as in effect on the Closing Date).

“Miller Acquisition” has the meaning specified in the Third Amendment.

“Miller Acquisition Documents” has the meaning specified in the Third Amendment.

“Miller Restricted Subsidiaries” has the meaning specified in Section 4.02(i)(i).

“Miller Sellers” has the meaning specified in the Third Amendment.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Company or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Multiple Employer Plan” means a Plan which has two or more contributing sponsors (including the Company or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“Net Book Value” means, (i) for any Eligible Account, the gross amount of such Eligible Account less (to the extent not otherwise deducted in calculating such gross amount, and without duplication) sales, excise or similar taxes, and less returns, discounts, claims, credits, allowances, accrued rebates, offsets, deductions, bad debts, reserves, counterclaims, disputes and other defenses of any nature at any time issued, owing, granted, outstanding, available or claimed in respect of such Eligible Account, (ii) for any Eligible Parts and Accessories Inventory, the lower of cost (on a first-in, first-out basis) or market, net of reserves, (iii) for any Eligible Equipment, the then-current net book value (after deducting all accumulated depreciation and amortization of such Eligible Equipment through the date of measurement) of such Eligible Equipment, (iv) for any Eligible Contract-in-Transit, the then-current net book value of such Eligible Contract-in-Transit, (v) for any Eligible New Vehicle Inventory, the then-current net book value of such Eligible New Vehicle Inventory, and (vi) for any Eligible Used Vehicle Inventory, (A) the then-current net book value of such Eligible Used Vehicle Inventory minus (B) the then-current net book value of any associated Used Vehicle Liens payable (other than Liens created by the Loan Documents), in each case, as reflected (as of the date of determination) on the books of the Company and its Subsidiaries in accordance with GAAP.

“Net Cash Proceeds” means the aggregate cash or cash equivalents proceeds received by any Loan Party or any Subsidiary in respect of any Disposition, any issuance of Equity Interests, Investment, Acquisition, or the incurrence or repayment of Indebtedness, net of (a) direct costs incurred in connection therewith (including, without limitation, legal, accounting and investment banking fees, and sales commissions), (b) taxes paid or payable as a result thereof and (c) in the case of any Disposition, the amount necessary to retire any Indebtedness secured by a Permitted Lien (ranking senior to any Lien of the Administrative Agent) on the related property; it being understood that “Net Cash Proceeds” shall include, without limitation, any cash or cash equivalents received upon the sale or other disposition of any non-cash consideration received by any Loan Party or any Subsidiary in any Disposition, any issuance of Equity Interests, Investment, Acquisition, or the incurrence or repayment of Indebtedness.

“New Vehicle” means a Vehicle which has (x) never been owned except by a manufacturer, distributor or dealer and (y) except in the case of a Vehicle which otherwise qualifies as a Demonstrator, Rental Vehicle or other mileage Vehicle, has never been registered.

~~“New Vehicle Automated Sweep Agreement” means any agreement, in form and substance reasonably satisfactory to the Administrative Agent and the New Vehicle Floorplan Swing Line Lender, providing for automatic crediting of funds to, and withdrawals of funds from, the New Vehicle Floorplan Offset Account.~~

“New Vehicle Borrower” has the meaning specified in the introductory paragraph hereto.

“New Vehicle Event of Default” has the meaning specified in Section 8.03.

“New Vehicle Floorplan Borrowing” means a New Vehicle Floorplan Committed Borrowing or a New Vehicle Floorplan Swing Line Borrowing, as the context may require.

“New Vehicle Floorplan Commitment” means, as to each Lender, its obligation to (a) make New Vehicle Floorplan Committed Loans to the New Vehicle Borrowers pursuant to Section 2.06, and (b) purchase participations in New Vehicle Floorplan Swing Line Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

“New Vehicle Floorplan Committed Borrowing” means a borrowing consisting of simultaneous New Vehicle Floorplan Committed Loans of the same Type made by each of the New Vehicle Floorplan Lenders pursuant to Section 2.06.

“New Vehicle Floorplan Committed Loan” has the meaning specified in Section 2.05.

“New Vehicle Floorplan Committed Loan Notice” means a notice of (a) a New Vehicle Floorplan Committed Borrowing, or (b) a conversion of New Vehicle Floorplan Committed Loans from one Type to the other, pursuant to Section 2.07, which shall be substantially in the form of Exhibit A-1 or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Company.

“New Vehicle Floorplan Facility” means the New Vehicle floorplan facility described in Sections 2.05 through 2.09 providing for New Vehicle Floorplan Loans to the New Vehicle Borrowers by the New Vehicle Floorplan Lenders.

“New Vehicle Floorplan Lender” means each Lender that has a New Vehicle Floorplan Commitment or, following termination of the New Vehicle Floorplan Commitments, has New Vehicle Floorplan Loans outstanding.

“New Vehicle Floorplan Loan” means an extension of credit by a New Vehicle Floorplan Lender to a New Vehicle Borrower under Article II in the form of a New Vehicle Floorplan Committed Loan (including any New Vehicle Floorplan Offset Account Advance) or a New Vehicle Floorplan Swing Line Loan.

“New Vehicle Floorplan Note” means a promissory note made by the New Vehicle Borrowers in favor of a Lender evidencing New Vehicle Floorplan Loans made by such Lender, substantially in the form of Exhibit C-2.

“New Vehicle Floorplan Offset Account” has the meaning ~~assigned thereto in the definition of “New Vehicle Floorplan Offset Agreement”~~specified in Section 2.09(b)(i).

“New Vehicle Floorplan Offset ~~Agreement~~” ~~means, collectively:~~Account Advances” has the meaning specified in Section 2.09(b)(ii).

~~(a) — an offset agreement in form and substance reasonably satisfactory to the Administrative Agent and the New Vehicle Floorplan Swing Line Lender, (i) providing for the crediting of monies of the Company or any of its Subsidiaries to a general ledger account maintained with Bank of America (a “New Vehicle Floorplan Offset Account”), and the withdrawal of monies from such account, (ii) providing that interest accrued on New Vehicle Floorplan Committed Loans will be offset by an amount equal to (A) the amount that is credited to the New Vehicle Floorplan Offset Account from time to time (a “Floorplan Offset Amount”), multiplied by (B) the interest rate applicable to New Vehicle Floorplan~~

~~Committed Loans from time to time; provided, however, that the Floorplan Offset Amount shall not exceed 20% of the aggregate Outstanding Amount of all New Vehicle Floorplan Loans at any time; and~~

~~(b) if applicable, any New Vehicle Automated Sweep Agreement.~~

“New Vehicle Floorplan Operations Group” means the group at Bank of America that operates and administers the New Vehicle Floorplan Facility.

“New Vehicle Floorplan Overdraft” has the meaning specified in Section 2.08.

“New Vehicle Floorplan Swing Line” means the revolving credit facility made available by the New Vehicle Floorplan Swing Line Lender pursuant to Section 2.07.

“New Vehicle Floorplan Swing Line Borrowing” means a borrowing of a New Vehicle Floorplan Swing Line Loan pursuant to Section 2.07.

“New Vehicle Floorplan Swing Line Lender” means Bank of America in its capacity as provider of New Vehicle Floorplan Swing Line Loans, or any successor New Vehicle Floorplan Swing Line Lender hereunder.

“New Vehicle Floorplan Swing Line Loan” has the meaning specified in Section 2.07(a).

“New Vehicle Floorplan Swing Line Loan Notice” means a notice of conversion of a New Vehicle Floorplan Swing Line Loan from one Type to the other pursuant to Section 2.07(b), which shall be substantially in the form of Exhibit B-1 or such other form as approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Company.

“New Vehicle Floorplan Swing Line Sublimit” means, at any time, an amount equal to the lesser of (a) \$85,000,000 or (b) the Aggregate New Vehicle Floorplan Commitments. The New Vehicle Floorplan Swing Line Sublimit is part of, and not in addition to, the Aggregate New Vehicle Floorplan Commitments.

[“New Vehicle Non-Offset Floorplan Loan” means a New Vehicle Floorplan Loan other than a New Vehicle Floorplan Offset Account Advance.](#)

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver or amendment that (i) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 10.01 and (ii) has been approved by the Required Lenders.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Non-Extending Lender” has the meaning specified in Section 2.23(b).

“Note” means a Revolving Note, a New Vehicle Floorplan Note or a Used Vehicle Floorplan Note, as applicable.

“Notice of Loan Prepayment” means a notice of prepayment with respect to a Loan, which shall be substantially in the form of Exhibit R or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer.

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, Letter of Credit, Secured Cash Management Agreement or Secured Hedge Agreement, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or

hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding; provided, that Obligations of a Loan Party shall exclude any Excluded Swap Obligation with respect to such Loan Party.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Organization Documents” means, (a) with respect to any corporation, the charter or certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating or limited liability company agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.05).

“Out of Balance” means, with respect to a New Vehicle Floorplan Loan, the outstanding balance thereof has not been paid in accordance with Section 2.15(b)(iii).

“Outstanding Amount” means (i) with respect to Revolving Committed Loans and Revolving Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Revolving Committed Loans and Revolving Swing Line Loans, as the case may be, occurring on such date; (ii) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Company of Unreimbursed Amounts, (iii) with respect to New Vehicle Floorplan Committed Loans and New Vehicle Floorplan Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of New Vehicle Floorplan Commitment Loans and New Vehicle Floorplan Swing Line Loans, as the case may be, occurring on such date and (iv) with respect to Used Vehicle Floorplan Committed Loans and Used Vehicle Floorplan Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Used Vehicle Floorplan Committed Loans and Used Vehicle Floorplan Swing Line Loans, as the case may be, occurring on such date.

“Participant” has the meaning specified in Section 10.06(d).

“Participant Register” has the meaning specified in Section 10.06(d).

“Payment Commitment” means a written agreement entered into between the New Vehicle Floorplan Swing Line Lender and a vehicle manufacturer or distributor (and if required pursuant to the terms of the Payment Commitment, the applicable Borrower or the Company), providing for advances of

the proceeds of New Vehicle Floorplan Swing Line Loans directly by the New Vehicle Floorplan Swing Line Lender to such manufacturer or distributor in payment for the purchase by the applicable New Vehicle Borrower of New Vehicles specified by vehicle identification number.

“Payoff Letter Commitment” means a written agreement entered into between the New Vehicle Floorplan Swing Line Lender and a financial institution (and if required pursuant to the terms of the Payoff Letter Commitment, the applicable Borrower or the Company), which agreement is delivered in connection with the payoff of floorplan financing provided by such financial institution and provides for advances of the proceeds of New Vehicle Floorplan Swing Line Loans directly by the New Vehicle Floorplan Swing Line Lender to such financial institution in order to pay for or refinance the purchase by the applicable New Vehicle Borrower of New Vehicles specified by vehicle identification number.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Act” means the Pension Protection Act of 2006.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum funding standards with respect to Pension Plans and set forth in Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“Pension Plan” means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by the Company and any ERISA Affiliate or with respect to which the Company or any ERISA Affiliate has any liability and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“Permitted Acquisition” means any Acquisition permitted by Section 7.19.

“Permitted Disposition” means any Disposition permitted by Section 7.05.

“Permitted Floorplan Indebtedness” means (i) Indebtedness under the New Vehicle Floorplan Facility or the Used Vehicle Floorplan Facility, and (ii) any other floorplan Indebtedness incurred by the Company or any Subsidiary to the extent such Indebtedness is permitted by this Agreement.

“Permitted FMCC Floorplan Indebtedness” means New Vehicle floorplan Indebtedness that (a) is owed to FMCC by any Subsidiary that operates a Ford or Lincoln dealership, (b) finances only the acquisition of new Ford or Lincoln Vehicles by such Ford or Lincoln dealership, (c) is not guaranteed or owed by any Person other than (i) any Subsidiary that operates such a Ford or Lincoln dealership or (ii) the Company, (d) is not secured by any assets other than the FMCC Collateral (unless otherwise agreed to by the Administrative Agent) and (e) is subject to an FMCC Intercreditor Agreement.

“Permitted Real Estate Debt” means that certain Indebtedness described on Schedule 1.02(P), and any other Indebtedness (other than Swap Contracts) of a Loan Party (i) secured solely by real property, fixtures, related real property rights, related contracts and proceeds of the foregoing, owned by such Loan Party, and (ii) for which no Person other than the obligor of such Indebtedness, the Company or any Subsidiary which is a Loan Party has any liability with respect to such Indebtedness, in each case of clauses (i) and (ii), so long as (x) the aggregate amount of all Permitted Real Estate Debt outstanding at any time shall not exceed eighty-five percent (85%) of the value of the real property securing such Indebtedness, as evidenced by the respective appraisals of the real property ordered in connection with obtaining such Indebtedness, (y) the amount of any Permitted Real Estate Debt relating to a particular parcel of real property shall not exceed one hundred percent (100%) of the value of such parcel securing such Indebtedness, as evidenced by the respective appraisal of such parcel ordered in connection with obtaining such Indebtedness, and (z) upon the request of the Administrative Agent, the Company shall promptly deliver to the Administrative Agent a copy of any appraisal described in clause (x) or (y) above.

“Permitted Service Loaner Indebtedness” means any Indebtedness that satisfies the requirements of Section 7.01(q).



“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Company or any ERISA Affiliate or any such Plan to which the Company or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“Platform” has the meaning specified in Section 6.02.

“Pledge Agreement” means that certain Third Amended and Restated Securities Pledge Agreement dated as of the Closing Date made by the Company and certain Loan Parties in favor of the Administrative Agent for the benefit of the Secured Parties, substantially in the form of Exhibit N attached hereto, as supplemented from time to time by the execution and delivery of Joinder Agreements pursuant to Section 6.14 and as otherwise supplemented, amended or modified from time to time.

“Prepayment Test Amount” means, as of any date of measurement thereof:

(a) the sum of (without duplication) (i) cash, cash equivalents and short-term marketable securities reflected on the books of the Company and its Subsidiaries, in each case not subject to any Lien (other than Liens created under the Loan Documents), (ii) the Net Book Value of Contracts-in-Transit, in each case not subject to any Lien (other than Liens created under the Loan Documents), (iii) the Net Book Value of New Vehicles, (iv) 85% of the Net Book Value of Used Vehicles (net of Lien payoffs); provided that Rental Vehicles shall be excluded from the calculation of the items in this clause (a), plus

(b) the Available Unused Revolving Commitments, minus

(c) the sum of (i) the Total New Vehicle Floorplan Outstandings, and (ii) the Total Used Vehicle Floorplan Outstandings, other than (in each case of clause (i) and (ii)) the portion of any such Total New Vehicle Floorplan Outstandings or Total Used Vehicle Floorplan Outstandings arising from Loans that finance Rental Vehicles.

“Prepayment Test Amount Certificate” means a certificate of a Responsible Officer of the Company substantially in the form of Exhibit M setting forth a calculation of the Prepayment Test Amount.

“Prior Indenture” means that certain Indenture, dated as of December 4, 2014 (as amended, supplemented and otherwise modified prior to the date hereof, and as further amended, supplemented or otherwise modified from time to time to the extent permitted hereunder), governing the \$600,000,000 aggregate principal amount of outstanding 6.0% Senior Subordinated Notes due 2024 of the Company.

“Pro Forma Compliance” means,

(i) with respect to any event that requires Pro Forma Compliance under this Agreement (each, a “Pro Forma Determination Event”) other than as set forth in clause (ii) or (iii) below, that: (A) the Company and its Subsidiaries are in pro forma compliance with the financial covenants set forth in Section 7.11 (calculated as if such Pro Forma Determination Event had occurred on the first day of the four fiscal quarter period ending on the last day of the most recent fiscal quarter in respect of which financial statements have been delivered pursuant to Section 6.01(a) or (b)), (B) the Total Revolving Outstandings will not exceed the lesser of the Aggregate Revolving Commitments and the Revolving Borrowing Base (such Total Revolving Outstandings and Revolving Borrowing Base being calculated on a pro forma basis as if such Pro Forma Determination Event had occurred on the date the most recent Revolving Borrowing Base Certificate has been delivered pursuant to Section 6.02(a)(i)), and (C) the Total Used Vehicle Floorplan Outstandings will not exceed the lesser of the Aggregate Used Vehicle Floorplan Commitments and the Used Vehicle Floorplan Borrowing Base (such Total Used Vehicle Floorplan Outstandings and Used Vehicle Floorplan Borrowing Base being calculated on a pro forma basis as if such Pro Forma Determination Event had occurred on the date the most recent Used Vehicle Floorplan Borrowing Base Certificate has been delivered pursuant to Section 6.02(b)),

(ii) with respect to any Restricted Payment to be made on any date (any such date, an “Applicable Restricted Payment Date”) as contemplated by Section 7.10, that the Company and its Subsidiaries will be in pro forma compliance with the financial covenants set forth in Section 7.11 as of the last day of the most recent fiscal quarter in respect of which financial statements have been delivered pursuant to Section 6.01(a) or (b), such financial covenants being calculated on a pro forma basis as if such Restricted Payment (and any other Restricted Payment made on the Applicable Restricted Payment Date or at any time since the last day of such fiscal quarter) had been made on the last day of such fiscal quarter, and

(iii) with respect to any prepayment of Indebtedness to be made on any date (any such date, an “Applicable Prepayment Date”) as contemplated by Section 7.16, that the Company and its Subsidiaries will be in pro forma compliance with the financial covenants set forth in Section 7.11 as of the last day of the fiscal quarter which includes the Applicable Prepayment Date as well as the last day of each of the three fiscal quarters succeeding the fiscal quarter containing the Applicable Prepayment Date, in each case (x) calculated as if such prepayment had occurred on the first day of the fiscal quarter which includes the Applicable Prepayment Date and (y) based on projected financial statements delivered to the Administrative Agent which do not reflect material and adverse changes in growth or turnover assumptions of trading assets or accounts payable as compared to the most recent financial statements delivered pursuant to Sections 6.01(a) or (b). Pro forma calculations made pursuant to this definition that require calculations of Consolidated EBITDAR on a pro forma basis will be made in accordance with Section 1.04(d).

“Pro Forma Compliance Certificate” means, with respect to any event, a duly completed Compliance Certificate demonstrating the pro forma calculations of the items set forth in the Compliance Certificate on a pro forma basis in accordance with the definition of “Pro Forma Compliance.”

“Pro Forma Prepayment Test Amount” means the Prepayment Test Amount calculated on a pro forma basis as of the last day of the fiscal quarter which includes the Applicable Prepayment Date as well as the last day of each of the three fiscal quarters succeeding the fiscal quarter containing the Applicable Prepayment Date, (a) calculated as if such prepayment had occurred on the first day of the fiscal quarter which includes the Applicable Prepayment Date and (b) based on projected financial statements delivered to the Administrative Agent which do not reflect material and adverse changes in growth or turnover assumptions of trading assets or accounts payable as compared to the most recent financial statements delivered pursuant to Section 6.01(a) or (b).

“Pro Forma Revolving Borrowing Base Certificate” means, with respect to any event, a duly completed Revolving Borrowing Base Certificate demonstrating the calculations of the Revolving Borrowing Base on a pro forma basis in accordance with the definition of “Pro Forma Compliance.”

“Pro Forma Used Vehicle Floorplan Borrowing Base Certificate” means, with respect to any event, a duly completed Used Vehicle Floorplan Borrowing Base Certificate demonstrating pro forma calculations of the Used Vehicle Floorplan Borrowing Base on a pro forma basis in accordance with the definition of “Pro Forma Compliance.”

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“Public Lender” has the meaning specified in Section 6.02.

“Qualified Cash” means, as of any date of determination, means the sum of (i) the amount of unrestricted (as defined below) cash and Cash Equivalents of the Company and its Restricted Subsidiaries at such time, to the extent held in deposit accounts or securities accounts (agreed to between the Company or such Restricted Subsidiary, as applicable, and the Administrative Agent) in each case which is a segregated account subject to a Blocked Account Agreement which ensures that the Administrative Agent has a first priority, perfected Lien in such account; provided that (a) the applicable account bank (if not the Administrative Agent) shall provide daily reports to the Administrative Agent setting forth the balances in such accounts and such information as the Administrative Agent may reasonably request, and (b) Qualified Cash shall not include any funds or accounts that constitute the Floorplan Offset Amount. For purposes of this definition “unrestricted” means, with respect to any cash or Cash Equivalent, that the use thereof for application to payment of Indebtedness is not prohibited by law or any contract to which the Company or its Restricted Subsidiaries is a party.

“Qualified ECP Guarantor” means, at any time, each Loan Party with total assets exceeding \$10,000,000 or that qualifies at such time as an “eligible contract participant” under the Commodity Exchange Act and can cause another Person to qualify as an “eligible contract participant” at such time under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Qualified Sale/Leaseback Transaction” means a sale by any of the Loan Parties or any of their Subsidiaries of personal property or real property and related fixtures and accessories used in the ordinary course of business, which property does not include any Collateral and which property is, in a concurrent transaction, leased by such Person from the purchaser thereof under a lease agreement, the terms of which, as of the date of such transaction, based upon the immediately preceding four fiscal quarters of the Company, would not cause the Company to be in Default under any of the provisions of this Agreement.

“Qualified Service Loaner Program” means any program with any Manufacturer, or the financial affiliate of such a Manufacturer, pursuant to which the Company or any Subsidiary (i) finances New Vehicles under such program, which New Vehicles are used by the Company or such Subsidiary as Rental Vehicles and (ii) is subject to an intercreditor agreement (in form and substance satisfactory to the Administrative Agent) between the creditor under such Indebtedness and the Administrative Agent (a “Service Loaner Intercreditor Agreement”).

“Real Estate Credit Facility” has the meaning specified in the Third Amendment.

“Recipient” means the Administrative Agent, any Lender, any L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder.

“Register” has the meaning specified in Section 10.06(c).

“Regulation U” means Regulation U of the FRB, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors, consultants, service providers and representatives of such Person and of such Person’s Affiliates.

“Rental Vehicle” means a New Vehicle less than two years old owned by a New Vehicle Borrower and purchased directly from a manufacturer as a New Vehicle and that is used as a service or daily loaner vehicle or is periodically subject to a rental contract with customers of the New Vehicle Borrower for loaner or rental periods of up to sixty (60) consecutive days or is used by dealership personnel in connection with parts and service operations. Rental Vehicles may be registered with applicable Governmental Authorities in the ordinary course of business.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

“Request for Credit Extension” means (a) with respect to a Revolving Committed Borrowing or conversion of Revolving Committed Loans, a Revolving Committed Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, (c) with respect to a Revolving Swing Line Loan, or conversion of Revolving Swing Line Loans, a Revolving Swing Line Loan Notice, (d) with respect to a New Vehicle Floorplan Committed Borrowing, or conversion of New Vehicle Floorplan Committed Loan, a New Vehicle Floorplan Committed Loan Notice, (e) with respect to a conversion of New Vehicle Floorplan Swing Line Loans, a New Vehicle Floorplan Swing Line Loan Notice, (f) with respect to a Used Vehicle Floorplan Committed Borrowing, or conversion of Used Vehicle Floorplan Committed Loans, a Used Vehicle Floorplan Committed Loan Notice, and (g) with respect to a Used Vehicle Floorplan Swing Line Loan, or conversion of Used Vehicle Floorplan Swing Line Loans, a Used Vehicle Floorplan Swing Line Loan Notice.

“Required Lenders” means, as of any date of determination, Lenders whose Commitments aggregate more than 50% of the Aggregate Commitments, provided that, if the Commitment of each Lender under an Applicable Facility to make Loans or the obligation of each L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02 or 8.04, the Commitments under such Facility shall be calculated based on the Total Revolving Outstandings, Total New Vehicle Floorplan Outstandings, or Total Used Vehicle Floorplan Outstandings (as the case may be) with respect to such Facility (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations, Revolving Swing Line Loans, New Vehicle Floorplan Swing Line Loans and Used Vehicle Floorplan Swing Line Loans, as applicable, being deemed “held” by such Lender for purposes of this definition); provided that (i) the Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders and (ii) in the event that at the time of such determination any New Vehicle Floorplan Overdraft is outstanding, each of (x) the Aggregate Commitments and the Total New Vehicle Floorplan Outstandings, and (y) the Commitment of or Total New Vehicle Floorplan Outstandings held by the New Vehicle Floorplan Swing Line Lender (as the case may be), shall be deemed for purposes of this determination to be increased in the amount of such outstanding New Vehicle Floorplan Overdraft.

“Rescindable Amount” has the meaning as defined in Section 2.20(b)(ii).

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Responsible Officer” means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer or controller of a Loan Party and solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01, the secretary or any assistant secretary of a Loan Party and, solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party. To the extent requested by the Administrative Agent, each Responsible Officer will provide an incumbency certificate and to the extent requested by the Administrative Agent, appropriate authorization documentation, in form and substance satisfactory to the Administrative Agent.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of the Company or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to the Company’s or any Subsidiary’s stockholders, partners or members (or the equivalent Person thereof).

“Restricted Subsidiary” means each direct or indirect Subsidiary of the Company that (i) is not an Immaterial Subsidiary, is not a Captive Insurance Company, is not a Specified Insurance Subsidiary and is not a Designated Escrow Subsidiary, (ii) owns or operates a dealership or (iii) owns any real estate used in the operation of a dealership.

“Revolving Autoborrow Advance” shall have the meaning specified in Section 2.04(b).

“Revolving Autoborrow Agreement” shall have the meaning specified in Section 2.04(b).

“Revolving Borrowing” means a Revolving Committed Borrowing or a Revolving Swing Line Borrowing, as the context may require.

“Revolving Borrowing Base” means as of any date of calculation, the lesser of (1) Aggregate Revolving Commitments or (2) the sum of:

(A) the sum of (i) the Net Book Value of Eligible Contracts-in-Transit, (ii) 80% of the Net Book Value of Eligible Accounts, including Eligible Accounts that are factory receivables, (iii) the Net Book Value of Eligible New Vehicle Inventory, (iv) 85% of the Net Book Value of Eligible Used Vehicle Inventory, (v) 65% of the Net Book Value of Eligible Parts and Accessories Inventory, (vi) 50% of Qualified Cash, and (vii) 40% of the Net Book Value of Eligible Equipment; provided that Rental Vehicles will be excluded from the calculation of the items in this clause (A);

plus (B) 75% of the appraised value of the Eligible Borrowing Base Real Estate (as reflected in the most recent FIRREA-conforming appraisal that the Administrative Agent has received with respect to such property); provided that amounts added to the Revolving Borrowing Base pursuant to this clause (B) shall not at any time exceed 25% of the Aggregate Revolving Commitments; and

minus (C) the sum of (i) the Total New Vehicle Floorplan Outstandings plus (ii) the Total Used Vehicle Floorplan Outstandings, minus (iii) the Floorplan Offset Amount (provided that the amount subtracted pursuant to this clause (iii) shall not at any time exceed \$50,000,000), other than (in the case of each of clauses (i) and (ii)) the portion of such Total New Vehicle Floorplan Outstandings or Total Used Vehicle Floorplan Outstandings arising from Loans that financed Rental Vehicles.

“Revolving Borrowing Base Certificate” means a certificate by a Responsible Officer of the Company, substantially in the form of Exhibit J-1 (or another form acceptable to the Administrative Agent) setting forth the calculation of the Revolving Borrowing Base, including a calculation of each component thereof, all in such detail as shall be reasonably satisfactory to the Administrative Agent (and which will include a designation of those assets and liabilities of Subsidiaries which operate Ford or Lincoln Franchises and other classifications which do not qualify for inclusion in the Revolving Borrowing Base because such assets are not subject to the first priority perfected Lien of the Administrative Agent or any other reason for disqualification thereof). All calculations of the Revolving Borrowing Base in connection with the preparation of any Revolving Borrowing Base Certificate shall originally be made by the Company and certified to the Administrative Agent. Notwithstanding the foregoing, if the Administrative Agent has reasonable grounds to believe that the calculation of the Revolving Borrowing Base set forth in any Revolving Borrowing Base Certificate is not in accordance with this Agreement, the Administrative Agent shall inform the Company of the grounds for such belief and shall request confirmation by the Company of the calculation. Prior to confirmation, the Revolving

Borrowing Base may be adjusted by the Administrative Agent so the calculation thereof is in accordance with this Agreement (in the Administrative Agent's reasonable determination).

"Revolving Commitment" means, as to each Lender, its obligation to (a) make Revolving Committed Loans to the Company pursuant to Section 2.01, (b) purchase participations in L/C Obligations, and (c) purchase participations in Revolving Swing Line Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"Revolving Committed Borrowing" means a borrowing consisting of simultaneous Revolving Committed Loans of the same Type made by each of the Revolving Lenders pursuant to Section 2.01.

"Revolving Committed Loan" has the meaning specified in Section 2.01.

"Revolving Committed Loan Notice" means a notice of (a) a Revolving Borrowing or (b) a conversion of Revolving Committed Loans from one Type to the other, pursuant to Section 2.02(a), which shall be substantially in the form of Exhibit A-2 or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Company.

"Revolving Credit Facility" means the revolving credit facility described in Sections 2.01 through 2.05 providing for Revolving Loans to the Company by the Revolving Lenders.

"Revolving Lender" means each Lender that has a Revolving Commitment or, following termination of the Revolving Commitments, has Revolving Loans outstanding.

"Revolving Loan" means an extension of credit by a Revolving Lender to the Company under Article II in the form of a Revolving Committed Loan or a Revolving Swing Line Loan.

"Revolving Note" means a promissory note made by the Company in favor of a Lender evidencing Revolving Loans made by such Lender, substantially in the form of Exhibit C-1.

"Revolving Swing Line" means the revolving credit facility made available by the Revolving Swing Line Lender pursuant to Section 2.04.

"Revolving Swing Line Borrowing" means a borrowing of a Revolving Swing Line Loan pursuant to Section 2.04.

"Revolving Swing Line Lender" means Bank of America in its capacity as provider of Revolving Swing Line Loans, or any successor revolving swing line lender hereunder.

"Revolving Swing Line Loan" has the meaning specified in Section 2.04(a).

"Revolving Swing Line Loan Notice" means a notice of a Revolving Swing Line Borrowing pursuant to Section 2.04(b) which shall be substantially in the form of Exhibit B-2 or such other form as approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Company.

"Revolving Swing Line Sublimit" means an amount equal to the lesser of (a) \$15,000,000 or (b) the Aggregate Revolving Commitments. The Revolving Swing Line Sublimit is part of, and not in addition to, the Aggregate Revolving Commitments.

"Revolving/Used Vehicle Event of Default" has the meaning specified in Section 8.01.

“Sanction(s)” means any international economic sanction administered or enforced by the United States Government (including without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc. and any successor thereto.

“Scheduled Unavailability Date” has the meaning specified in [Section 3.03\(b\)](#).

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Secured Cash Management Agreement” means any Cash Management Agreement that is entered into by and between any Loan Party and any Cash Management Bank.

“Secured Hedge Agreement” means any Swap Contract permitted under [Article VII](#) that is entered into by and between any Loan Party and any Hedge Bank.

“Secured Parties” means, collectively, the Administrative Agent, the Lenders, the L/C Issuers, the Hedge Banks, the Cash Management Banks, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to [Section 9.05](#), and the other Persons the Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Security Instruments.

“Security Agreement” means that certain Third Amended and Restated Security Agreement dated as of the Closing Date made by the Company and each other Loan Party in favor of the Administrative Agent for the benefit of the Secured Parties, substantially in the form of [Exhibit K](#) attached hereto, as supplemented from time to time by the execution and delivery of Joinder Agreements pursuant to [Section 6.14](#), and as otherwise supplemented, amended, or modified from time to time.

“Security Instruments” means, collectively or individually as the context may indicate, the Security Agreement, the Pledge Agreement, the Escrow and Security Agreement, any Joinder Agreement, and all other agreements, instruments and other documents, whether now existing or hereafter in effect, pursuant to which any Borrower, any other Loan Party, or any other Person shall grant or convey to the Administrative Agent, for the benefit of the Secured Parties a Lien in, or any other Person shall acknowledge any such Lien in, property as security for all or any portion of the Obligations and any other obligation under any Loan Document.

“Senior Notes” has the meaning specified in the Third Amendment.

“Service Loaner Intercreditor Agreement” has the meaning specified in the definition of “Qualified Service Loaner Program.”

“SOFR” means the [Secured Overnight Financing Rate as administered by the Federal Reserve Bank of New York \(or a successor administrator\)](#).

“SOFR Adjustment” with respect to [Daily Simple SOFR](#) means [0.10% \(10 basis points\)](#).

“Specified Acquisition Agreement Representations” means, with respect to the date of any Credit Extension, the representations made by the Miller Sellers or their subsidiaries in the Miller Acquisition Documents that are material to the interests of the Administrative Agent or the Lenders, but only to the extent that the Company or any of the Company’s affiliates have the right to terminate the Company’s or such affiliate’s obligations under the Miller Acquisition Documents or to decline to consummate the acquisition of the business to be financed by a Credit Extension on such date as a result of a breach of such representations in the Miller Acquisition Documents without liability to the Company or such affiliate.

“Specified Event of Default” means an Event of Default arising under any or all of Sections 8.01(a), 8.01(f), 8.01(g), 8.03(a), 8.03(g) or 8.03(h).

“Specified Insurance Subsidiary” means (a) each of Landcar Casualty Company, Landcar Agency, Inc., and Landcar Administration Company, or (b) any insurance company organized under the laws of a state of the United States which company is either (i) formed by the Company or any of its Subsidiaries or (ii) acquired by the Company or any of its Subsidiaries or Affiliates in connection with any Permitted Acquisition, in each case of clauses (a), (b)(i) and (b)(ii) so long such entity is and remains a regulated entity and the sole purpose of such entity is providing extended service contracts and other consumer protection products to customers of the Vehicle Borrowers.

“Specified Loan Party” means any Loan Party that is not then an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to Section 10.20).

“Specified Representations” means the representations and warranties (including to the extent incorporated by reference in other Loan Documents) set forth in Section 5.01(a), Section 5.01(b)(ii) (solely with respect to corporate, limited liability company or partnership power and authority), Section 5.02 (solely with respect to authorization of execution, delivery and performance of the Loan Documents by corporate or other organizational action), Section 5.02(a), Section 5.02(b)(i) (solely with respect to material Franchise Agreements or Framework Agreements, material lease agreements and other material agreements with manufacturers or distributors of Vehicles), Section 5.02(c), Section 5.04, Section 5.14, Section 5.21, Section 5.22, Section 5.25, Section 5.26, and Section 5.27.

“Specified Subsidiary” means (a) any Restricted Subsidiary of the Company that does not own or operate a Ford or Lincoln dealership, or (b) at any time after the FMCC Indebtedness Termination has occurred, any Restricted Subsidiary.

“Subordinated Indebtedness” means all Indebtedness of the Company or its Subsidiaries which (a) is subordinated to the Obligations contained herein in a manner reasonably acceptable to the Administrative Agent or has subordination terms substantially similar to those in the Prior Indenture, (b) without limitation of any other provision herein (including Section 7.16), does not require any payment of principal (or give the holder thereof any rights to require repurchase of such Indebtedness through put rights or otherwise) prior to the date that is 30 days after the Maturity Date (other than reasonable and customary prepayment, redemption, repurchase or defeasance obligations in connection with (i) sales of assets (so long as the terms relating thereto are not materially less favorable to the Loan Parties than the comparable terms set forth in the Prior Indenture), (ii) a change in control and (iii) the exercise of remedies in connection with the occurrence of an event of default), (c) such other Indebtedness has interest rates and fees that are not in excess of the rates and fees standard in the market at the time such Indebtedness is incurred as determined by the Company in good faith, (d) has, or the Administrative Agent (in its reasonable discretion after Reasonable Review (defined below)) has determined that such Indebtedness has, standstill and blockage provisions with regard to payments and enforcement actions that are no more adverse to the Lenders than those in the Prior Indenture (as such standstill and blockage provisions relate to the Existing Credit Agreement lenders and lenders that provide Vehicle floorplan financing to the Company or any of its Subsidiaries), and (e) the terms relating to amortization, maturity, collateral (if any), and other material terms of such Indebtedness and of any agreement entered into and of any instrument issued in connection therewith, taken as a whole, are not materially less favorable to the Loan Parties than the terms of the Prior Indenture, in each case as determined by the Company in good faith. For the purposes of clause (d) above, “Reasonable Review” means that the Administrative Agent has had the opportunity and reasonable time to review copies of the definitive documentation for such Indebtedness, which copies have been provided to the Administrative Agent by the Company or its Subsidiaries.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a



“Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Company and shall include, without limitation, the Unrestricted Subsidiaries.

“Subsidiary Guarantors” means, collectively, all Subsidiaries executing a Subsidiary Guaranty on the Closing Date and all other Subsidiaries that enter into a Joinder Agreement; provided, for the avoidance of doubt, that no Foreign Subsidiary shall be a Subsidiary Guarantor.

“Subsidiary Guaranty” means the Third Amended and Restated Subsidiary Guaranty Agreement made by the Subsidiary Guarantors in favor of the Administrative Agent and the Lenders, substantially in the form of Exhibit F as supplemented from time to time by execution and delivery of Joinder Agreements pursuant to Section 6.14 and as otherwise supplemented, amended, or modified from time to time.

“Successor Rate” has the meaning specified in Section 3.03(b).

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Obligations” means with respect to any Guarantor any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Swing Line Borrowings” means, collectively, Revolving Swing Line Borrowings, New Vehicle Floorplan Swing Line Borrowings and Used Vehicle Floorplan Swing Line Borrowings.

“Swing Line Lenders” means, collectively, the Revolving Swing Line Lender, the New Vehicle Floorplan Swing Line Lender and the Used Vehicle Floorplan Swing Line Lender

“Swing Line Loans” means, collectively, Revolving Swing Line Loans, New Vehicle Floorplan Swing Line Loans and Used Vehicle Floorplan Swing Line Loans.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Threshold Amount” means \$50,000,000.

“Third Amendment” means that certain Third Amendment to Third Amended and Restated Credit Agreement dated as of October 29, 2021 by and among the Company, the New Vehicle Borrowers, the Used Vehicle Borrowers, the Guarantors, the Lenders and the Administrative Agent.

“Total Credit Exposure” means, as to any Lender at any time, the sum of the unused Commitments of such Lender at such time, plus the aggregate principal amount at such time of such Lender’s outstanding Loans and such Lender’s participation in L/C Obligations at such time.

“Total New Vehicle Floorplan Outstandings” means the aggregate Outstanding Amount of all New Vehicle Floorplan Loans.

“Total Outstandings” means the aggregate of the Total Revolving Outstandings, Total New Vehicle Floorplan Outstandings and Total Used Vehicle Floorplan Outstandings.

“Total Revolving Outstandings” means the aggregate Outstanding Amount of all Revolving Loans and all L/C Obligations.

“Total Used Vehicle Floorplan Outstandings” means the aggregate Outstanding Amount of all Used Vehicle Floorplan Loans.

“Type” means with respect to a ~~Committed~~ Loan, its character as a Base Rate Loan or a ~~Eurodollar Rate~~ Daily Simple SOFR Loan.

“UCC” means the Uniform Commercial Code as in effect in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“UCP” means the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600 (or such later version thereof as may be in effect at the applicable time).

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“United States” and “U.S.” mean the United States of America.

“Unreimbursed Amount” has the meaning specified in Section 2.03(c)(i).

“Unrestricted Subsidiaries” means all Subsidiaries of the Company other than the Restricted Subsidiaries.

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning specified in Section 3.01(e)(ii)(B)(III).

“Used Vehicle” means a Vehicle other than a New Vehicle.

“Used Vehicle Autoborrow Advance” shall have the meaning specified in Section 2.12(b).

“Used Vehicle Autoborrow Agreement” shall have the meaning specified in Section 2.12(b).

“Used Vehicle Borrower” has the meaning specified in the introductory paragraph hereto.

“Used Vehicle Floorplan Borrowing” means a Used Vehicle Floorplan Committed Borrowing or a Used Vehicle Floorplan Swing Line Borrowing, as the context may require.

“Used Vehicle Floorplan Borrowing Base” means, as of any date of calculation, 85% of the Net Book Value of Eligible Used Vehicle Inventory.

“Used Vehicle Floorplan Borrowing Base Certificate” means a certificate by a Responsible Officer of the Company, substantially in the form of Exhibit J-2 (or another form acceptable to the Administrative Agent) setting forth the calculation of the Used Vehicle Floorplan Borrowing Base, including a calculation of each component thereof, all in such detail as shall be reasonably satisfactory to the Administrative Agent (and which will include a designation of those assets of Subsidiaries which operate Ford or Lincoln Franchises and other classifications which do not qualify for inclusion in the Used Vehicle Floorplan Borrowing Base because such assets are not subject to the first priority perfected Lien of the Administrative Agent or any other reason for disqualification thereof). All calculations of the Used Vehicle Floorplan Borrowing Base in connection with the preparation of any Used Vehicle Floorplan Borrowing Base Certificate shall originally be made by the Company and certified to the Administrative Agent. Notwithstanding the foregoing, if the Administrative Agent has reasonable grounds to believe that the calculation of the Used Vehicle Floorplan Borrowing Base set forth in any Used Vehicle Floorplan Borrowing Base Certificate is not in accordance with this Agreement, the Administrative Agent shall inform the Company of the grounds for such belief and shall request confirmation by the Company of the calculation. Prior to confirmation, the Used Vehicle Floorplan Borrowing Base may be adjusted by the Administrative Agent so the calculation thereof is in accordance with this Agreement (in the Administrative Agent’s reasonable determination).

“Used Vehicle Floorplan Commitment” means, as to each Lender, its obligation to (a) make Used Vehicle Floorplan Committed Loans to the Used Vehicle Borrowers pursuant to Section 2.11, and (b) purchase participations in Used Vehicle Floorplan Swing Line Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

“Used Vehicle Floorplan Committed Borrowing” means a borrowing consisting of simultaneous Used Vehicle Floorplan Committed Loans of the same Type made by each of the Used Vehicle Floorplan Lenders pursuant to Section 2.11.

“Used Vehicle Floorplan Committed Loan” has the meaning specified in Section 2.10.

“Used Vehicle Floorplan Committed Loan Notice” means a notice of (a) a Used Vehicle Floorplan Committed Borrowing, or (b) a conversion of Used Vehicle Floorplan Committed Loans from one Type to the other, pursuant to Section 2.11(a), which shall be substantially in the form of Exhibit A-3 or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Company.

“Used Vehicle Floorplan Facility” means the Used Vehicle floorplan facility described in Sections 2.10 through 2.12 providing for Used Vehicle Floorplan Loans to the Used Vehicle Borrowers by the Used Vehicle Floorplan Lenders.

“Used Vehicle Floorplan Lender” means each Lender that has a Used Vehicle Floorplan Commitment or, following termination of the Used Vehicle Floorplan Commitments, has Used Vehicle Floorplan Loans outstanding.

“Used Vehicle Floorplan Loan” means an extension of credit by a Used Vehicle Floorplan Lender to a Used Vehicle Borrower under Article II in the form of a Used Vehicle Floorplan Committed Loan or, in the case of the Company only, a Used Vehicle Floorplan Swing Line Loan.

“Used Vehicle Floorplan Note” means a promissory note made by the Used Vehicle Borrowers in favor of a Lender evidencing Used Vehicle Floorplan Loans made by such Lender, substantially in the form of Exhibit C-3.

“Used Vehicle Floorplan Swing Line” means the revolving credit facility made available by the Used Vehicle Floorplan Swing Line Lender pursuant to Section 2.12.

“Used Vehicle Floorplan Swing Line Borrowing” means a borrowing of a Used Vehicle Floorplan Swing Line Loan pursuant to Section 2.12.

“Used Vehicle Floorplan Swing Line Lender” means Bank of America in its capacity as provider of Used Vehicle Floorplan Swing Line Loans, or any successor Used Vehicle Floorplan Swing Line Lender hereunder.

“Used Vehicle Floorplan Swing Line Loan” has the meaning specified in Section 2.12(a).

“Used Vehicle Floorplan Swing Line Loan Notice” means a notice of a Used Vehicle Floorplan Swing Line Borrowing pursuant to Section 2.12(b) which shall be substantially in the form of Exhibit B-3 or such other form as approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Company.

“Used Vehicle Floorplan Swing Line Sublimit” means an amount equal to the lesser of (a) \$20,000,000 or (b) the Aggregate Used Vehicle Floorplan Commitments. The Used Vehicle Floorplan Swing Line Sublimit is part of, and not in addition to, the Aggregate Used Vehicle Floorplan Commitments.

“Vehicle” means any automobile or truck approved for highway use by any State of the United States.

“Vehicle Borrower” has the meaning specified in the introductory paragraph hereto.

“Vehicle Title Documentation” has the meaning specified in Section 6.05.

“Within Line Limitation” means,

(a) with respect to any New Vehicle Borrower, any dealer location and any specific vehicle manufacturer, distributor, or (in the case of a dealer trade) other dealer involved in such trade, as applicable, limitations on the amount of New Vehicle Floorplan Loans that may be advanced to such manufacturer, distributor or other dealer with respect to New Vehicles purchased or to be purchased by such New Vehicle Borrower for such dealer location, or

(b) with respect to any New Vehicle Borrower, any dealer location and any specific vehicle manufacturer, distributor, or (in the case of a dealer trade) other dealer involved in such trade, as applicable, and Demonstrators, Rental Vehicles and Fleet Vehicles, limitations on the amount of New

Vehicle Floorplan Loans that may be advanced to such manufacturer, distributor or other dealer with respect to Demonstrators, Rental Vehicles and Fleet Vehicles purchased or to be purchased by such New Vehicle Borrower for such dealer location, which limitations (in each case) are agreed to from time to time by the New Vehicle Floorplan Swing Line Lender and such distributor or manufacturer from time to time.

“Write-Down and Conversion Powers” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

### 1.03 Other Interpretive Provisions

. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Any capitalized terms used herein but not defined herein that are defined in the UCC shall have the respective meanings assigned to such terms in the UCC. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including,” the words “to” and “until” each mean “to but excluding,” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) Any reference herein to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder

(and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

#### 1.04 Accounting Terms.

(a) **Generally.** All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Company and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded. Any additions to or exclusions from the computation of any financial item based upon FASB ASC 825 or FASB ASC 470-20 shall be detailed on the Compliance Certificate delivered pursuant to Section 6.02(a).

(b) **Changes in GAAP.** If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Company or the Required Lenders shall so request, the Administrative Agent, the Required Lenders and the Company shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Company shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding anything else set forth herein, (i) any lease that was or would have been treated as an operating lease under GAAP as in effect on the Closing Date that would become or be treated as a capital lease solely as a result of a change in GAAP after the Closing Date shall always be treated as an operating lease for all purposes and at all times under this Agreement and (ii) the determination of whether a lease is to be treated as an operating lease or capital lease shall be made without giving effect to any change in accounting for leases pursuant to GAAP resulting from the implementation of Financial Accounting Standards Board ASU No. 2016-02, Leases (Topic 842), to the extent such adoption would require treating any lease (or similar arrangement conveying the right to use) as a capital lease where such lease (or similar arrangement) would not have been required to be so treated under GAAP as in effect on December 31, 2015; provided that, upon the request of the Administrative Agent, the Company shall nonetheless provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

(c) **Consolidation of Variable Interest Entities.** All references herein to consolidated financial statements of the Company and its Subsidiaries or to the determination of any amount for the Company and its Subsidiaries on a consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that the Company is required to consolidate pursuant to FASB ASC 810 as if such variable interest entity were a Subsidiary as defined herein.

(d) **Pro Forma Treatment of Acquisitions and Dispositions.** Consolidated EBITDAR will be calculated after giving pro forma effect to any Material Dispositions or Material Acquisitions occurring during the relevant period, or after the relevant period and on or prior to the date of determination, as if such dispositions or acquisitions occurred on the first day of such period, and which may include such adjustments as are permitted under Regulation S-X of the SEC; provided that any such pro forma adjustment of Consolidated EBITDAR shall not result in an increase of more than 10% of Consolidated EBITDAR prior to such adjustment (the "10% EBITDAR Cap"), unless (a) the Company provides to the Administrative Agent (i) the supporting calculations for such adjustment and (ii) such other information as the Administrative Agent may reasonably request to determine the accuracy of such calculations, or (b) the Administrative Agent (in its sole discretion) otherwise consents to such increase in excess of the 10% EBITDAR Cap.

If the calculation of Consolidated EBITDAR for any period gives pro forma effect to any disposition or acquisition, the other elements of the Consolidated Fixed Charge Coverage Ratio and Consolidated Total Lease Adjusted Leverage Ratio will also be calculated after giving pro forma effect to such acquisition or disposition, provided that if the pro forma adjustment of Consolidated EBITDAR resulting from such disposition or acquisition is limited as a result of the 10% EBITDAR Cap, then the pro forma adjustment to any other element of the Consolidated Fixed Charge Coverage Ratio or the Consolidated Total Lease Adjusted Leverage Ratio, as applicable, will likewise be limited on a proportional basis so that the amount of any other adjustment will be reduced by the same percentage as the reduction in the amount of adjustment to Consolidated EBITDAR, and provided further, in any event, that any such pro forma adjustment of the numerator of the Consolidated Total Lease Adjusted Leverage Ratio (or the denominator of the Consolidated Fixed Charge Coverage Ratio) will not result in a decrease of more than 10% to the amount of such numerator (or denominator) prior to such adjustment (the “Applicable 10% Cap”) unless (A) the Company provides to the Administrative Agent (1) the supporting calculations for such adjustment and (2) such other information as the Administrative Agent may reasonably request to determine the accuracy of such calculations, or (B) the Administrative Agent (in its sole discretion) otherwise consents to such decrease in excess of the Applicable 10% Cap. If in connection with any Material Acquisition, the Company or any Subsidiary acquires associated real estate, eliminating any leases on the real estate being acquired or any leases of a Subsidiary being acquired, then the rent associated with those leases will not be included in the numerator of the Consolidated Total Lease Adjusted Leverage Ratio.

(e) Rounding. Any financial ratios required to be maintained by the Company pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

### 1.05 Times of Day

. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

### 1.06 Interest Rates

. The Administrative Agent and the Lenders do not warrant, nor accept responsibility, nor shall the Administrative Agent or any of the Lenders have any liability with respect to the administration, submission or any other matter related to ~~the rates in the definition of “Eurodollar Rate”~~ Daily Simple SOFR or with respect to any rate that is an alternative or replacement for or successor to any of such rate (including, without limitation, any ~~Benchmark Replacement~~ Successor Rate) or the effect of any of the foregoing, or of any ~~Benchmark Replacement~~ Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions or other activities that affect any reference rate referred to herein, or any alternative, successor or replacement rate (including, without limitation, any ~~Benchmark Replacement~~ Successor Rate) (or any component of any of the foregoing) or any related spread or other adjustments thereto, in each case, in a manner adverse to the ~~Borrower~~ Borrowers. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (including, without limitation, any ~~Benchmark Replacement~~ Successor Rate) (or any component of any of the foregoing), in each case pursuant to the terms of this Agreement, and shall have no liability to the ~~Borrower~~ Borrowers, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or other action or omission related to or affecting the selection, determination, or calculation of any rate (or component thereof) provided by any such information source or service.

### 1.07 Letter of Credit Amounts

. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided, however, that with

respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

### **1.08 Limited Condition Acquisition**

. In the event that the Company notifies the Administrative Agent in writing that any proposed Acquisition is a Limited Condition Acquisition and that the Company wishes to test the conditions to such Limited Condition Acquisition and the availability of the Indebtedness incurred in connection with such Limited Condition Acquisition in accordance with this Section, then, notwithstanding anything to the contrary herein or in any other Loan Document, the following provisions shall apply:

(a) any condition to such Limited Condition Acquisition or such Indebtedness that requires that no Default or Event of Default shall have occurred and be continuing at the time of such Acquisition or the incurrence of such Indebtedness, shall be satisfied if (i) no Default or Event of Default shall have occurred and be continuing at the time of the execution of the definitive purchase agreement, merger agreement or other acquisition agreement governing such Limited Condition Acquisition and (ii) no Specified Event of Default shall have occurred and be continuing both immediately before and immediately after giving effect to such Limited Condition Acquisition and the incurrence of such Indebtedness;

(b) any condition to such Limited Condition Acquisition or such Indebtedness that the representations and warranties in this Agreement and the other Loan Documents shall be true and correct at the time of such Acquisition or the incurrence of such Indebtedness shall be subject to customary "SunGard" or other customary applicable "certain funds" conditionality provisions (including, without limitation, a condition that the representations and warranties under the relevant agreements relating to such Limited Condition Acquisition as are material to the Lenders providing such Indebtedness shall be true and correct, but only to the extent that the Company or its applicable Subsidiary has the right to terminate its obligations under such agreement as a result of a breach of such representations and warranties or the failure of those representations and warranties to be true and correct), so long as (i) all representations and warranties in this Agreement and the other Loan Documents are true and correct in all material respects (or in all respects in the case of any representation and warranty qualified by materiality or Material Adverse Effect) at the time of execution of the definitive purchase agreement, merger agreement or other acquisition agreement governing such Acquisition and (ii) all Specified Representations are true and correct both immediately before and immediately after giving effect to such Limited Condition Acquisition and the incurrence of such Indebtedness;

(c) any financial ratio test or condition to such Limited Condition Acquisition or the incurrence of such Indebtedness, may upon the written election of the Company delivered to the Administrative Agent prior to the execution of the definitive agreement for such Limited Condition Acquisition, be tested either (i) upon the execution of the definitive agreement with respect to such Limited Condition Acquisition or (ii) upon the consummation of the Limited Condition Acquisition and related incurrence of Indebtedness, in each case, after giving effect to the relevant Limited Condition Acquisition and related incurrence of Indebtedness, on a pro forma basis; provided that the failure to deliver a notice under this Section 1.08(c) prior to the date of execution of the definitive agreement for such Limited Condition Acquisition shall be deemed an election to test the applicable financial ratio under subclause (ii) of this Section 1.08(c); and

(d) if the Company has made an election with respect to any Limited Condition Acquisition to test a financial ratio test or condition at the time specified in clause (c)(i) of this Section, then in connection with any subsequent calculation of any ratio or basket during the period commencing on the relevant date of execution of the definitive agreement with respect to such Limited Condition Acquisition until the earlier of (i) the date on which such Limited Condition Acquisition is consummated or (ii) the date that the definitive agreement for such Limited Condition Acquisition is terminated or expires without consummation of such Limited Condition Acquisition, any such ratio or basket shall be required to be satisfied assuming such Limited Condition Acquisition and other transactions in connection therewith (including the incurrence or assumption of Indebtedness) have not been consummated.



The foregoing provisions shall apply with similar effect during the pendency of multiple Limited Condition Acquisitions such that each of the possible scenarios is separately tested. For the avoidance of doubt, any election (or any portion thereof) made pursuant to this Section may be rescinded by the Company prior to the consummation of such Limited Condition Acquisition or incurrence of such Indebtedness and in such case the conditions applicable to such Acquisition or incurrence of Indebtedness shall be tested without giving effect to this [Section 1.08](#).

## ARTICLE II. THE COMMITMENTS AND CREDIT EXTENSIONS

### 2.01 Revolving Committed Loans

. Subject to the terms and conditions set forth herein, each Revolving Lender severally agrees to make loans (each such loan, a “[Revolving Committed Loan](#)”) to the Company from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Revolving Lender’s Revolving Commitment; provided, however, that after giving effect to any Revolving Committed Borrowing, (a) the Total Revolving Outstandings shall not exceed the lesser of the Aggregate Revolving Commitments or the Revolving Borrowing Base, and (b) the aggregate Outstanding Amount of the Revolving Committed Loans of any Revolving Lender, plus such Lender’s Applicable Revolving Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender’s Applicable Revolving Percentage of the Outstanding Amount of all Revolving Swing Line Loans shall not exceed such Lender’s Revolving Commitment. Within the limits of each Lender’s Revolving Commitment, and subject to the other terms and conditions hereof, the Company may borrow under this [Section 2.01](#), prepay under [Section 2.13](#), and reborrow under this [Section 2.01](#). Revolving Committed Loans may be Base Rate Loans or ~~Eurodollar Rate~~[Daily Simple SOFR](#) Loans, as further provided herein.

### 2.02 Borrowings, Conversions and Continuations of Revolving Committed Loans.

(a) Each Revolving Committed Borrowing and each conversion of Revolving Committed Loans from one Type to the other, shall be made upon the Company’s irrevocable notice to the Administrative Agent, which may be given by (A) telephone, or (B) a Revolving Committed Loan Notice; provided that any telephonic notice must be confirmed promptly by delivery to the Administrative Agent of a Revolving Committed Loan Notice. Each such Revolving Committed Loan Notice must be received by the Administrative Agent not later than 1:00 p.m. (i) one Business Day prior to the requested date of any Revolving Borrowing of ~~Eurodollar Rate~~[Daily Simple SOFR](#) Committed Loans or of any conversion of ~~Eurodollar Rate~~[Daily Simple SOFR](#) Committed Loans to Base Rate Committed Loans, and (ii) one Business Day prior to the requested date of any Borrowing of Base Rate Committed Loans. Each Borrowing of, conversion to or continuation of ~~Eurodollar Rate~~[Daily Simple SOFR](#) Committed Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof. Except as provided in [Sections 2.03\(c\)](#) and [2.04\(c\)](#), each Borrowing of or conversion to Base Rate Committed Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Revolving Committed Loan Notice shall specify (i) whether the Company is requesting a Revolving Committed Borrowing or a conversion of Revolving Committed Loans from one Type to the other, (ii) the requested date of the Borrowing or conversion, as the case may be (which shall be a Business Day), (iii) the principal amount of Revolving Committed Loans to be borrowed, converted or continued, and (iv) the Type of Revolving Committed Loans to be borrowed or to which existing Revolving Committed Loans are to be converted. If the Company fails to provide a timely Revolving Committed Loan Notice requesting a conversion of ~~Eurodollar Rate~~[Daily Simple SOFR](#) Loans to Base Rate Loans, such Loans shall, subject to [Article III](#), continue as ~~Eurodollar Rate~~[Daily Simple SOFR](#) Loans. If the Company fails to specify a Type of Revolving Committed Loan in a Revolving Committed Loan Notice, then the applicable Revolving Committed Loans shall, subject to [Article III](#), be made as, or converted to, ~~Eurodollar Rate~~[Daily Simple SOFR](#) Loans.

(b) Following receipt of a Revolving Committed Loan Notice, the Administrative Agent shall promptly notify each Revolving Lender of the amount of its Applicable Revolving Percentage of the applicable Revolving Committed Loans. Each Lender shall make the amount of its Revolving Committed Loan available to the Administrative Agent in immediately available funds at the Administrative Agent’s Office not later than 1:00 p.m. on the Business Day specified in the applicable Revolving Committed

Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is an initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the Company in like funds as received by the Administrative Agent by crediting the account of the Company on the books of Bank of America with the amount of such funds; provided, however, that if, on the date the Revolving Committed Loan Notice with respect to such Borrowing is given by the Company, there are L/C Borrowings outstanding, then the proceeds of such Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to the Company as provided above.

(c) ~~The Administrative Agent shall promptly notify the Company and the Revolving Lenders of the interest rate applicable to any Eurodollar Rate Loans upon determination of such interest rate.~~ At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Company and the Revolving Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

## 2.03 Letters of Credit.

(a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) each L/C Issuer agrees, in reliance upon the agreements of the Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit for the account of the Company or its Subsidiaries, and to amend or extend Letters of Credit previously issued by it, in accordance with subsection (b) below, and (2) to honor drawings under the Letters of Credit; and (B) the Revolving Lenders severally agree to participate in Letters of Credit issued for the account of the Company or its Subsidiaries and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (w) the Total Outstandings shall not exceed the Aggregate Commitments, (x) the Total Revolving Outstandings shall not exceed the lesser of the Aggregate Revolving Commitments or the Revolving Borrowing Base, (y) the aggregate Outstanding Amount of the Revolving Committed Loans of any Revolving Lender, plus such Lender's Applicable Revolving Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender's Applicable Revolving Percentage of the Outstanding Amount of all Revolving Swing Line Loans shall not exceed such Lender's Revolving Commitment, and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by the Company for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Company that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Company's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Company may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

(ii) No L/C Issuer shall issue any Letter of Credit, if:

(A) subject to Section 2.03(b)(iii), the expiry date of the requested Letter of Credit would occur more than eighteen months after the date of issuance or last extension, unless the Required Lenders have approved such expiry date; or

(B) the expiry date of the requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Lenders have approved such expiry date.

(iii) No L/C Issuer shall be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Issuer from issuing the Letter of Credit, or any Law applicable to such L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or request that such L/C Issuer refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon such L/C Issuer with respect to the Letter of Credit any restriction, reserve or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such L/C Issuer in good faith deems material to it;

(B) the issuance of the Letter of Credit would violate one or more policies of such L/C Issuer applicable to letters of credit generally;

(C) except as otherwise agreed by the Administrative Agent and the applicable L/C Issuer, the Letter of Credit is in an initial stated amount less than \$100,000;

(D) the Letter of Credit is to be denominated in a currency other than Dollars;

(E) any Lender is at such time a Defaulting Lender, unless each L/C Issuer having actual or potential Fronting Exposure with respect to Letters of Credit issued (or then proposed to be issued) by it has entered into arrangements, including the delivery of Cash Collateral, satisfactory to each such L/C Issuer as to Letters of Credit issued (or then proposed to be issued) by it (in its sole discretion) with the Company or such Defaulting Lender to eliminate such L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.27(a)(iv) with respect to the Defaulting Lender) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which such L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion; or

(F) the Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder.

(iv) No L/C Issuer shall amend any Letter of Credit if such L/C Issuer would not be permitted at such time to issue the Letter of Credit in its amended form under the terms hereof.

(v) No L/C Issuer shall be under any obligation to amend any Letter of Credit if (A) such L/C Issuer would have no obligation at such time to issue the Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of the Letter of Credit does not accept the proposed amendment to the Letter of Credit.

(vi) Each L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article IX with respect to any acts taken or omissions suffered by such L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article IX included each L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to each L/C Issuer.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Company delivered to the applicable L/C Issuer (with a copy to the Administrative

Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Company. Such Letter of Credit Application may be sent by facsimile, by United States mail, by overnight courier, by electronic transmission using the system provided by L/C Issuer, by personal delivery or by any other means acceptable to the L/C Issuer. Such Letter of Credit Application must be received by such L/C Issuer and the Administrative Agent not later than 1:00 p.m. at least ten Business Days (or such later date and time as the Administrative Agent and such L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to such L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to such L/C Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as such L/C Issuer may require. Additionally, the Company shall furnish to such L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as such L/C Issuer or the Administrative Agent may require.

(ii) Promptly after receipt of any Letter of Credit Application, the applicable L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Company and, if not, such L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the applicable L/C Issuer has received written notice from any Lender, the Administrative Agent or any Loan Party, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not then be satisfied, then, subject to the terms and conditions hereof, such L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Company (or the applicable Subsidiary) or enter into the applicable amendment, as the case may be, in each case in accordance with such L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Lender's Applicable Percentage times the amount of such Letter of Credit.

(iii) If the Company so requests in any applicable Letter of Credit Application, the applicable L/C Issuer may, in its sole discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit such L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the applicable L/C Issuer, the Company shall not be required to make a specific request to such L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Revolving Lenders shall be deemed to have authorized (but may not require) the applicable L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that such L/C Issuer shall not permit any such extension if (A) such L/C Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required

Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Revolving Lender or the Company that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing such L/C Issuer not to permit such extension.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the applicable L/C Issuer will also deliver to the Company and the Administrative Agent a true and complete copy of such Letter of Credit or amendment. Each L/C Issuer will also promptly deliver to the Company and the Administrative Agent copies of any non-renewal notification sent to beneficiaries of Auto-Extension Letters of Credit.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall notify the Company and the Administrative Agent thereof. Not later than 1:00 p.m. on the date of any payment by the applicable L/C Issuer under a Letter of Credit (each such date, an “Honor Date”), the Company shall reimburse such L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing. If the Company fails to so reimburse such L/C Issuer by such time, the Administrative Agent shall promptly notify each Lender of the Honor Date, the amount of the unreimbursed drawing (the “Unreimbursed Amount”), and the amount of such Revolving Lender’s Applicable Revolving Percentage thereof. In such event, the Company shall be deemed to have requested a Revolving Committed Borrowing of ~~Eurodollar Rate~~ Daily Simple SOFR Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of ~~Eurodollar Rate~~ Daily Simple SOFR Loans, but subject to the amount of the unutilized portion of the Aggregate Revolving Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Revolving Committed Loan Notice). Any notice given by the applicable L/C Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Revolving Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose) for the account of the applicable L/C Issuer at the Administrative Agent’s Office in an amount equal to its Applicable Revolving Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent (or, if later, one Business Day after the Administrative Agent delivers such notice), whereupon, subject to the provisions of Section 2.03(c)(iii), each Revolving Lender that so makes funds available shall be deemed to have made a ~~Eurodollar Rate~~ Daily Simple SOFR Committed Loan to the Company in such amount. The Administrative Agent shall remit the funds so received to the applicable L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Committed Borrowing of ~~Eurodollar Rate~~ Daily Simple SOFR Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the Company shall be deemed to have incurred from the applicable L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Revolving Lender’s payment to the Administrative Agent for the account of the applicable L/C Issuer pursuant to Section 2.03(c)(i) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Revolving Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Revolving Lender funds its Revolving Committed Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the applicable L/C Issuer for any amount

drawn under any Letter of Credit, interest in respect of such Revolving Lender's Applicable Percentage of such amount shall be solely for the account of the applicable L/C Issuer.

(v) Each Revolving Lender's obligation to make Revolving Committed Loans or L/C Advances to reimburse the applicable L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Revolving Lender may have against the applicable L/C Issuer, the Company or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Revolving Lender's obligation to make Revolving Committed Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Company of a Revolving Committed Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Company to reimburse the applicable L/C Issuer for the amount of any payment made by the such L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Revolving Lender fails to make available to the Administrative Agent for the account of the applicable L/C Issuer any amount required to be paid by such Revolving Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), then, without limiting the other provisions of this Agreement, such L/C Issuer shall be entitled to recover from such Revolving Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by such L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by such L/C Issuer in connection with the foregoing. If such Revolving Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Revolving Lender's Revolving Committed Loan included in the relevant Revolving Committed Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the applicable L/C Issuer submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the applicable L/C Issuer has made a payment under any Letter of Credit and has received from any Revolving Lender such Revolving Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), if the Administrative Agent receives for the account of such L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Company or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Revolving Lender its Applicable Revolving Percentage thereof in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the applicable L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by such L/C Issuer in its discretion), each Revolving Lender shall pay to the Administrative Agent for the account of such L/C Issuer its Applicable Revolving Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Revolving Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Revolving Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of the Company to reimburse the applicable L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute,

unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Company, any Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the applicable L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) waiver by the applicable L/C Issuer of any requirement that exists for such L/C Issuer's protection and not the protection of the ~~Borrower~~Borrowers or any waiver by the applicable L/C Issuer which does not in fact materially prejudice the ~~Borrower~~Borrowers;

(v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by the applicable L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

(vii) any payment by the applicable L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by such L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Company, any Borrower or any Subsidiary.

The Company shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Company's instructions or other irregularity, the Company will immediately notify the applicable L/C Issuer. The Company shall be conclusively deemed to have waived any such claim against the applicable L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) Role of L/C Issuer. Each Revolving Lender and the Company agree that, in paying any drawing under a Letter of Credit, the applicable L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the applicable L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of such L/C Issuer shall be liable to any Revolving Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Revolving Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful

misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Company hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Company's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the applicable L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of such L/C Issuer shall be liable or responsible for any of the matters described in clauses (i) through (viii) of Section 2.03(e); provided, however, that anything in such clauses to the contrary notwithstanding, the Company may have a claim against such L/C Issuer, and such L/C Issuer may be liable to the Company, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Company which the Company proves were caused by such L/C Issuer's willful misconduct or gross negligence or such L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the applicable L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and such L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. Each L/C Issuer may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication ("SWIFT") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary. Each L/C Issuer shall provide to the Administrative Agent a list of outstanding Letters of Credit (together with type, amounts, beneficiary, issue date, expiry date and non-renewal notice period(s) for any Auto-Extension Letters of Credit) issued by it on a monthly basis.

(g) Applicability of ISP; Limitation of Liability. Unless otherwise expressly agreed by the applicable L/C Issuer and the Company when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), the rules of the ISP shall apply to each standby Letter of Credit. Notwithstanding the foregoing, no L/C Issuer shall be responsible to the Company or any Subsidiary for, and no L/C Issuer's rights and remedies against the Company or any Subsidiary shall be impaired by, any action or inaction of such L/C Issuer required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where such L/C Issuer or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(h) Letter of Credit Fees. The Company shall pay to the Administrative Agent for the account of each Revolving Lender in accordance, subject to Section 2.27, with its Applicable Revolving Percentage a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit equal to the Applicable Rate times the daily amount available to be drawn under such Letter of Credit; provided, however, any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the applicable L/C Issuer pursuant to this Section 2.03 shall be payable, to the maximum extent permitted by applicable Law, to the other Lenders in accordance with the upward adjustments in their respective Applicable Revolving Percentages allocable to such Letter of Credit pursuant to Section 2.27(a)(iv), with the balance of such fee, if any, payable to such L/C Issuer for its own account. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.07. Letter of Credit Fees shall be (i) due and payable on the first Automatic Debit Date after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand and (ii) computed on a quarterly basis in arrears. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. Notwithstanding anything to the



contrary contained herein, upon the request of the Required Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(i) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. The Company shall pay directly to the applicable L/C Issuer for its own account a fronting fee with respect to each Letter of Credit, at the rate per annum (i) in the case of Bank of America, N.A. as L/C Issuer, as specified in the Fee Letter, computed on the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears and (ii) in the case of any other L/C Issuer, as agreed to among the Company and such Person. Such fronting fee shall be due and payable on the first Automatic Debit Date after the end of each March, June, September and December in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.07. In addition, the Company shall pay directly to each L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(j) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(k) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Company shall be obligated to reimburse the applicable L/C Issuer hereunder for any and all drawings under such Letter of Credit. The Company hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of the Company, and that the Company's business derives substantial benefits from the businesses of such Subsidiaries.

(l) Letters of Credit Reports. For so long as any Letter of Credit issued by an L/C Issuer is outstanding, such L/C Issuer shall deliver to the Administrative Agent a report in the form of Exhibit Q hereto (appropriately completed with the information for every outstanding Letter of Credit issued by such L/C Issuer) on the last Business Day of each fiscal quarter (or, at the request of the Administrative Agent, on the last Business Day of each calendar month), on each date that an L/C Credit Extension occurs with respect to any such Letter of Credit, and on each date there is a change to the information set forth on such report. The Administrative Agent shall deliver to the Lenders on a quarterly basis a report of all outstanding Letters of Credit.

#### **2.04 Revolving Swing Line Loans.**

(a) The Revolving Swing Line. Subject to the terms and conditions set forth herein (and, if a Revolving Autoborrow Agreement is in effect, in such agreement), the Revolving Swing Line Lender, in reliance upon the agreements of the other Lenders set forth in this Section 2.04, shall make loans (each such loan, a "Revolving Swing Line Loan") to the Company from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Revolving Swing Line Sublimit, notwithstanding the fact that such Revolving Swing Line Loans, when aggregated with the Applicable Revolving Percentage of the Outstanding Amount of Revolving Committed Loans and L/C Obligations of the Revolving Lender acting as Revolving Swing Line Lender, may exceed the amount of such Revolving Lender's Commitment; provided, however, that (i) after giving effect to any Revolving Swing Line Loan, (x) the Total Outstandings shall not exceed the Aggregate Commitments, (y) the Total Revolving Outstandings shall not exceed the lesser of the Aggregate Revolving Commitments or the Revolving Borrowing Base and (z) the aggregate Outstanding Amount of the Revolving Committed Loans of any Revolving Lender, plus such Lender's Applicable Revolving Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender's Applicable Revolving Percentage of the Outstanding Amount of all Revolving Swing Line Loans shall not exceed such Lender's Revolving Commitment, and (ii) the Revolving Swing Line Lender shall not be under any obligation to make any such Revolving Swing Line Loan if any Lender is at such time a Defaulting Lender, unless the Revolving Swing Line Lender has entered into arrangements, including the delivery of Cash Collateral,

satisfactory to the Revolving Swing Line Lender (in its sole discretion) with the Company or such Defaulting Lender to eliminate such Revolving Swing Line Lender's actual or potential Fronting Exposure (after giving effect to [Section 2.27\(a\)\(iv\)](#)) with respect to the Defaulting Lender arising from either the Revolving Swing Line Loan then proposed to be made or that Revolving Swing Line Loan and all other Revolving Swing Line Loans then outstanding as to which the Revolving Swing Line Lender has actual or potential Fronting Exposure, as it may elect in its sole discretion; and provided, further, that (subject to the terms of any Revolving Autoborrow Agreement that may be in effect) the Company shall not use the proceeds of any Revolving Swing Line Loan to refinance any outstanding Revolving Swing Line Loan. Within the foregoing limits, and subject to the other terms and conditions hereof, the Company may borrow under this [Section 2.04](#), prepay under [Section 2.13](#), and reborrow under this [Section 2.04](#). Each Revolving Swing Line Loan may be a Base Rate Loan or a ~~Eurodollar Rate~~[Daily Simple SOFR](#) Loan. Immediately upon the making of a Revolving Swing Line Loan, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Revolving Swing Line Lender a risk participation in such Revolving Swing Line Loan in an amount equal to the product of such Lender's Applicable Revolving Percentage times the amount of such Revolving Swing Line Loan.

(b) At any time a Revolving Autoborrow Agreement is not in effect, each Revolving Swing Line Borrowing and each conversion of Revolving Swing Line Loans from one type to the other shall be made upon the Company's irrevocable notice to the Revolving Swing Line Lender and the Administrative Agent, which may be given by (A) telephone or (B) by a Revolving Swing Line Loan Notice. Each such Revolving Swing Line Loan Notice must be received by the Revolving Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the requested borrowing date or date of any conversion of ~~Eurodollar Rate~~[Daily Simple SOFR](#) Loans to Base Rate Loans or of any conversion of Base Rate Loans to ~~Eurodollar Rate~~[Daily Simple SOFR](#) Loans, and in each case shall specify (i) the amount to be borrowed, which shall be a minimum of \$100,000, (ii) the requested borrowing date, which shall be a Business Day and (iii) the Type of Revolving Swing Line Loan to be borrowed or to which existing Revolving Swing Line Loans are to be converted. Promptly after receipt by the Revolving Swing Line Lender of any Revolving Swing Line Loan Notice, the Revolving Swing Line Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Revolving Swing Line Loan Notice and, if not, the Revolving Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Revolving Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Revolving Lender) prior to 2:00 p.m. on the date of the proposed Revolving Swing Line Borrowing (A) directing the Revolving Swing Line Lender not to make such Revolving Swing Line Loan as a result of the limitations set forth in the proviso to the first sentence of [Section 2.04\(a\)](#), or (B) that one or more of the applicable conditions specified in [Article IV](#) is not then satisfied, then, subject to the terms and conditions hereof, the Revolving Swing Line Lender will, not later than 3:00 p.m. on the borrowing date specified in such Revolving Swing Line Loan Notice, make the amount of its Revolving Swing Line Loan available to the Company at its office by crediting the account of the Company on the books of the Revolving Swing Line Lender in immediately available funds. If the Company fails to provide a timely Revolving Swing Line Loan Notice requesting a conversion of ~~Eurodollar Rate~~[Daily Simple SOFR](#) Loans to Base Rate Loans, such Loans shall, subject to [Article III](#), continue as ~~Eurodollar Rate~~[Daily Simple SOFR](#) Loans. If the Company fails to specify a Type of Revolving Swing Line Loan in a Revolving Swing Line Loan Notice, then the applicable Revolving Swing Line Loan shall, subject to [Article III](#), be made as a ~~Eurodollar Rate~~[Daily Simple SOFR](#) Loan.

In order to facilitate the borrowing of Revolving Swing Line Loans, the Company and the Revolving Swing Line Lender may mutually agree to, and are hereby authorized to, enter into an agreement in form and substance reasonably satisfactory to the Administrative Agent and the Revolving Swing Line Lender (the "[Revolving Autoborrow Agreement](#)") providing for the automatic advance by the Revolving Swing Line Lender of Revolving Swing Line Loans under the conditions set forth in such agreement, which shall be in addition to the conditions set forth herein (each such advance, a "[Revolving Autoborrow Advance](#)"); provided that, (i) in no event shall the Company be entitled to Revolving Autoborrow Advances pursuant to a Revolving Autoborrow Agreement at any time a Used Vehicle Autoborrow ~~Agreement or a New Vehicle Floorplan Offset~~ Agreement is in place and (ii) the Company may, once per calendar year and upon 30 days advance notice to the Administrative Agent, the Revolving Swing Line Lender, the Used Vehicle Floorplan Swing Line Lender and the New Vehicle Floorplan

Swing Line Lender and upon the payment to the Administrative Agent of a \$10,000 fee (which fee may be waived in the sole discretion of the Administrative Agent), alternate ~~(x)~~ between having a Revolving Autoborrow Agreement; or a Used Vehicle Autoborrow Agreement ~~or a New Vehicle Floorplan Offset Agreement in place, or (y) between having a New Vehicle Floorplan Offset Agreement (with a New Vehicle Automated Sweep Agreement) or a New Vehicle Floorplan Offset Agreement (without a New Vehicle Automated Sweep Agreement)~~ in place. At any time a Revolving Autoborrow Agreement is in effect, the requirements for Revolving Swing Line Borrowings set forth in the immediately preceding paragraph shall not apply, and all Revolving Swing Line Borrowings shall be made in accordance with the Revolving Autoborrow Agreement, until the right to such Revolving Swing Line Borrowings is suspended or terminated hereunder or in accordance with the terms of the Revolving Autoborrow Agreement. Solely for purposes of determining the availability of Revolving Committed Loans (other than Revolving Committed Loans used to refinance Revolving Swing Line Loans) and for determining the Total Revolving Outstandings in connection with Section 2.14, at any time during which a Revolving Autoborrow Agreement is in effect, the Outstanding Amount of all Revolving Swing Line Loans shall be deemed to be the amount of the Revolving Swing Line Sublimit. For purposes of any Revolving Swing Line Borrowing pursuant to the Revolving Autoborrow Agreement, all references to Bank of America shall be deemed to be a reference to Bank of America, in its capacity as Revolving Swing Line Lender hereunder.

(c) Refinancing of Revolving Swing Line Loans.

(i) The Revolving Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the Company (which hereby irrevocably authorizes the Revolving Swing Line Lender to so request on its behalf), that each Revolving Lender make a ~~Eurodollar Rate~~Daily Simple SOFR Committed Loan in an amount equal to such Revolving Lender's Applicable Revolving Percentage of the amount of Revolving Swing Line Loans then outstanding; provided that (unless a Revolving Autoborrow Agreement is then in effect) the Revolving Swing Line Lender intends to request each Revolving Lender to make such ~~Eurodollar Rate~~Daily Simple SOFR Committed Loans no less frequently than once in any given calendar month. Such request shall be made in writing (which written request shall be deemed to be a Revolving Committed Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of ~~Eurodollar Rate~~Daily Simple SOFR Loans, but subject to the unutilized portion of the Aggregate Revolving Commitments and the conditions set forth in Section 4.02. Each Revolving Lender shall make an amount equal to its Applicable Revolving Percentage of the amount specified in such Revolving Committed Loan Notice available to the Administrative Agent in immediately available funds (and the Administrative Agent may apply Cash Collateral available with respect to the applicable Revolving Swing Line Loan) for the account of the Revolving Swing Line Lender at the Administrative Agent's Office not later than 1:00 p.m. on the day specified in such Revolving Committed Loan Notice (or, if later, one Business Day after the Revolving Swing Lender delivers such notice), whereupon, subject to Section 2.04(c)(ii), each Revolving Lender that so makes funds available shall be deemed to have made a ~~Eurodollar Rate~~Daily Simple SOFR Committed Loan to the Company in such amount. The Administrative Agent shall remit the funds so received to the Revolving Swing Line Lender.

(ii) If for any reason any Revolving Swing Line Loan cannot be refinanced by such a Revolving Committed Borrowing in accordance with Section 2.04(c)(i), the request for ~~Eurodollar Rate~~Daily Simple SOFR Revolving Committed Loans submitted by the Revolving Swing Line Lender as set forth herein shall be deemed to be a request by the Revolving Swing Line Lender that each of the Revolving Lenders fund its risk participation in the relevant Revolving Swing Line Loan and each Lender's payment to the Administrative Agent for the account of the Revolving Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Revolving Lender fails to make available to the Administrative Agent for the account of the Revolving Swing Line Lender any amount required to be paid by such Revolving Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Revolving Swing Line Lender shall be entitled to recover from

such Revolving Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Revolving Swing Line Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Revolving Swing Line Lender in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Revolving Swing Line Lender in connection with the foregoing. If such Revolving Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Revolving Lender's Revolving Committed Loan included in the relevant Revolving Committed Borrowing or funded participation in the relevant Revolving Swing Line Loan, as the case may be. A certificate of the Revolving Swing Line Lender submitted to any Revolving Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Revolving Lender's obligation to make Revolving Committed Loans or to purchase and fund risk participations in Revolving Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Revolving Lender may have against the Revolving Swing Line Lender, the Company or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Revolving Lender's obligation to make Revolving Committed Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the Company to repay Revolving Swing Line Loans, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any Revolving Lender has purchased and funded a risk participation in a Revolving Swing Line Loan, if the Revolving Swing Line Lender receives any payment on account of such Revolving Swing Line Loan, the Revolving Swing Line Lender will distribute to such Revolving Lender its Applicable Revolving Percentage of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Revolving Lender's risk participation was funded) in the same funds as those received by the Revolving Swing Line Lender.

(ii) If any payment received by the Revolving Swing Line Lender in respect of principal or interest on any Revolving Swing Line Loan is required to be returned by the Revolving Swing Line Lender under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the Revolving Swing Line Lender in its discretion), each Revolving Lender shall pay to the Revolving Swing Line Lender its Applicable Revolving Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. The Administrative Agent will make such demand upon the request of the Revolving Swing Line Lender. The obligations of the Revolving Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Revolving Swing Line Lender. The Revolving Swing Line Lender shall be responsible for invoicing the Company for interest on the Revolving Swing Line Loans. Until each Revolving Lender funds its ~~Eurodollar Rate~~ Daily Simple SOFR Committed Loan or risk participation pursuant to this Section 2.04 to refinance such Revolving Lender's Applicable Revolving Percentage of any Revolving Swing Line Loan, interest in respect of such Applicable Revolving Percentage shall be solely for the account of the Revolving Swing Line Lender.

(f) Payments Directly to Revolving Swing Line Lender. The Company shall make all payments of principal and interest in respect of the Revolving Swing Line Loans directly to the Revolving Swing Line Lender.

## 2.05 New Vehicle Floorplan Committed Loans

. Subject to the terms and conditions set forth herein, each New Vehicle Floorplan Lender severally agrees to make loans (each such loan, a “New Vehicle Floorplan Committed Loan”) to the New Vehicle Borrowers from time to time, on any Business Day during the Availability Period, in an aggregate amount outstanding not to exceed at any time the amount of such Lender’s New Vehicle Floorplan Commitment; provided, however, that after giving effect to any New Vehicle Floorplan Committed Borrowing, (i) the Total Outstandings shall not exceed the Aggregate Commitments, (ii) the Total New Vehicle Floorplan Outstandings shall not exceed the Aggregate New Vehicle Floorplan Commitments, (iii) the aggregate Outstanding Amount of the New Vehicle Floorplan Committed Loans of any New Vehicle Floorplan Lender plus such Lender’s Applicable New Vehicle Floorplan Percentage of the Outstanding Amount of all New Vehicle Floorplan Swing Line Loans shall not exceed such Lender’s New Vehicle Floorplan Commitment, (iv) such Loan, together with the aggregate Outstanding Amount of all other New Vehicle Floorplan Loans made on or prior to such date shall not exceed any applicable Within Line Limitation unless otherwise consented to by the Administrative Agent in its sole discretion, and (v) on a per New Vehicle basis, such Loan shall not exceed 100% of the original invoice price (including freight charges) of each New Vehicle financed, provided, further, that the proceeds of New Vehicle Floorplan Committed Loans shall only be used by a New Vehicle Borrower to pay the purchase price of New Vehicles owned by such New Vehicle Borrower, including dealer trade, Demonstrators, Rental Vehicles and Fleet Vehicles (including the refinancing of New Vehicle Floorplan Swing Line Loans or other new vehicle floorplan loans that had financed (or refinanced) such New Vehicle Borrower’s purchase of such New Vehicles), including refinancings from New Vehicle Floorplan Offset Account Advances. Within the limits of each New Vehicle Floorplan Lender’s New Vehicle Floorplan Commitment, and subject to the other terms and conditions hereof, the New Vehicle Borrowers may borrow under this Section 2.05, prepay under Section 2.14, and reborrow under this Section 2.05. New Vehicle Floorplan Committed Loans may be Base Rate Loans or Eurodollar Rate Daily Simple SOFR Loans, as further provided herein. Notwithstanding anything herein to the contrary, after giving effect to any Borrowing or conversion, all outstanding New Vehicle Floorplan Loans of the Company and the New Vehicle Borrowers must be of the same Type.

## 2.06 Borrowings, Conversions and Continuations of New Vehicle Floorplan Committed Loans.

(a) Each New Vehicle Floorplan Committed Borrowing and each conversion of New Vehicle Floorplan Committed Loans from one Type to the other shall be made (i) upon the Company’s irrevocable notice to the Administrative Agent, which may be given by (A) telephone, or (B) a New Vehicle Floorplan Committed Loan Notice; provided that any telephonic notice must be confirmed promptly by delivery to the Administrative Agent of a New Vehicle Floorplan Committed Loan Notice; provided further, that New Vehicle Floorplan Committed Borrowings at the request of the Company shall only be permitted on the Closing Date, during the Asbury New Vehicle Control Period, and otherwise at times permitted by the Administrative Agent in its sole discretion and (ii) at any time other than during an Asbury New Vehicle Control Period, upon the request of the New Vehicle Floorplan Swing Line Lender (on behalf of the Company) to the Administrative Agent; provided that the entire proceeds of any New Vehicle Floorplan Committed Loans requested by the New Vehicle Floorplan Swing Line Lender pursuant to this clause (ii) shall be applied to repay the Outstanding Amount of the New Vehicle Floorplan Swing Line Loans or to honor Payoff Letter Commitments. Each such New Vehicle Floorplan Committed Loan Notice from the Company must be received by the Administrative Agent not later than 1:00 p.m. (A) one Business Day prior to the requested date of any New Vehicle Floorplan Borrowing of Eurodollar Rate Daily Simple SOFR Loans or of any conversion of Eurodollar Rate Daily Simple SOFR Loans to Base Rate Committed Loans or of any conversion of Base Rate Committed Loans to Eurodollar Rate Daily Simple SOFR Loans, and (B) one Business Day prior to the requested date of any Borrowing of Base Rate Committed Loans. Each New Vehicle Floorplan Committed Loan Notice from the Company shall specify (W) whether the Company is requesting a New Vehicle Floorplan Committed Borrowing, a conversion of New Vehicle Floorplan Committed Loans from one Type to the other, (X) the requested date of the Borrowing or conversion, as the case may be (which shall be a Business Day), (Y) the principal amount of New Vehicle Floorplan Committed Loans to be borrowed or converted, and (Z) the Type of New Vehicle Floorplan Committed Loans to be borrowed. If the Company fails to provide a timely New Vehicle Floorplan Committed Loan Notice requesting a conversion of Eurodollar Rate Daily

Simple SOFR Loans to Base Rate Loans, such Loans shall continue as ~~Eurodollar Rate~~Daily Simple SOFR Loans. If the Company fails to specify a Type of New Vehicle Floorplan Committed Loan in a New Vehicle Floorplan Committed Loan Notice then the applicable New Vehicle Floorplan Committed Loans shall be made as, or converted to, ~~Eurodollar Rate~~Daily Simple SOFR Loans.

(b) During an Asbury New Vehicle Control Period, the proceeds of any New Vehicle Floorplan Committed Loans requested by the Company shall be applied only to repay the Outstanding Amount of the New Vehicle Floorplan Swing Line Loans or to honor Payoff Letter Commitments.

(c) Following receipt of a New Vehicle Floorplan Committed Loan Notice, the Administrative Agent shall promptly notify each New Vehicle Floorplan Lender of the amount of its Applicable New Vehicle Floorplan Percentage of the applicable New Vehicle Floorplan Committed Loans. Each such Lender shall make the amount of its New Vehicle Floorplan Committed Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable New Vehicle Floorplan Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is an initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the New Vehicle Swing Line Lender who will repay New Vehicle Floorplan Swing Line Loans or honor Payoff Letter Commitments.

~~(d) The Administrative Agent shall promptly notify the Company and the New Vehicle Floorplan Lenders of the interest rate applicable to any Eurodollar Rate Loans upon determination of such interest rate.~~ At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Company and the New Vehicle Floorplan Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

## **2.07 New Vehicle Floorplan Swing Line Loan.**

(a) ~~The New Vehicle Floorplan Swing Line~~. Subject to the terms and conditions set forth herein, the New Vehicle Floorplan Swing Line Lender agrees, in reliance upon the agreements of the other New Vehicle Floorplan Lenders set forth in this Section 2.07, to make loans (each such loan, a "New Vehicle Floorplan Swing Line Loan") to the New Vehicle Borrowers from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the New Vehicle Floorplan Swing Line Sublimit, notwithstanding the fact that such New Vehicle Floorplan Swing Line Loans, when aggregated with the Applicable New Vehicle Floorplan Percentage of the Outstanding Amount of New Vehicle Floorplan Committed Loans of the Lender acting as New Vehicle Floorplan Swing Line Lender, may exceed the amount of such Lender's New Vehicle Floorplan Commitment; provided, however, that (i) after giving effect to any New Vehicle Floorplan Swing Line Loan, (w) subject to Section 2.08, the Total Outstandings shall not exceed the Aggregate Commitments, (x) subject to Section 2.08, the Total New Vehicle Floorplan Outstandings shall not exceed the Aggregate New Vehicle Floorplan Commitments, (y) subject to Section 2.08, the aggregate Outstanding Amount of the New Vehicle Floorplan Committed Loans of any New Vehicle Floorplan Lender, plus such Lender's Applicable New Vehicle Floorplan Percentage of the Outstanding Amount of all New Vehicle Floorplan Swing Line Loans shall not exceed such Lender's New Vehicle Floorplan Commitment, and (z) such Loan, together with the aggregate Outstanding Amount of all other New Vehicle Floorplan Swing Line Loans made on or prior to such date shall not exceed any applicable Within Line Limitation unless otherwise consented to by the New Vehicle Floorplan Swing Line Lender in its sole discretion, and (ii) the New Vehicle Floorplan Swing Line Lender shall not be under any obligation to make any such New Vehicle Floorplan Swing Line Loan if any Lender is at such time a Defaulting Lender, unless the New Vehicle Floorplan Swing Line Lender has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the New Vehicle Floorplan Swing Line Lender (in its sole discretion) with the Company or such Defaulting Lender to eliminate such New Vehicle Floorplan Swing Line Lender's actual or potential Fronting Exposure (after giving effect to Section 2.27(a)(iv)) with respect to the Defaulting Lender arising from either the New Vehicle Floorplan Swing Line Loan then proposed to be made or that New Vehicle Floorplan Swing Line Loan and all other New Vehicle Floorplan Swing Line Loans then outstanding as to which the New Vehicle Floorplan Swing Line Lender has actual or potential Fronting Exposure, as it may elect in its sole discretion; and provided, further, that the proceeds of New Vehicle Floorplan Swing Line Loans shall only be used (x) to honor

New Vehicle Floorplan drafts presented by the applicable vehicle manufacturer or distributor to the New Vehicle Floorplan Swing Line Lender pursuant to Payment Commitments, (y) to honor obligations arising under Payoff Letter Commitments or (z) otherwise to pay the purchase price of New Vehicles. Within the foregoing limits, and subject to the other terms and conditions hereof, the New Vehicle Borrowers may borrow under this [Section 2.07](#), prepay under [Section 2.13](#), and reborrow under this [Section 2.07](#). Each New Vehicle Floorplan Swing Line Loan may be a Base Rate Loan or a ~~Eurodollar Rate~~[Daily Simple SOFR](#) Loan. Except as otherwise provided with respect to New Vehicle Floorplan Overdrafts, immediately upon the making of a New Vehicle Floorplan Swing Line Loan, each New Vehicle Floorplan Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the New Vehicle Floorplan Swing Line Lender a risk participation in such New Vehicle Floorplan Swing Line Loan in an amount equal to the product of such Lender's Applicable New Vehicle Floorplan Percentage times the amount of such New Vehicle Floorplan Swing Line Loan.

(b) Payment Commitments and Payoff Letter Commitments.

(i) The New Vehicle Floorplan Swing Line Lender is authorized to make New Vehicle Floorplan Swing Line Loans for the account of the New Vehicle Borrowers directly to certain individual manufacturers or distributors that provide New Vehicles to the New Vehicle Borrowers, in accordance with the terms and conditions of the respective Payment Commitment agreed to between the New Vehicle Floorplan Swing Line Lender and each such manufacturer or distributor, and without any further notice as otherwise required in this Section. Each New Vehicle Floorplan Swing Line Loan made pursuant to a Payment Commitment shall be a ~~Eurodollar Rate~~[Daily Simple SOFR](#) Loan at the time of such Borrowing, but may be converted to a Base Rate Loan in accordance with the terms of this Agreement. The New Vehicle Borrowers shall be and remain jointly and severally liable to the New Vehicle Floorplan Swing Line Lender, or the New Vehicle Floorplan Lenders, as applicable, for all payments made to a manufacturer or distributor pursuant to a Payment Commitment.

(ii) The New Vehicle Floorplan Swing Line Lender is authorized to make New Vehicle Floorplan Swing Line Loans for the account of the New Vehicle Borrowers directly to certain individual financial institutions that financed New Vehicles owned by or being acquired by the New Vehicle Borrowers, in accordance with the terms and conditions of the respective Payoff Letter Commitment agreed to between the New Vehicle Floorplan Swing Line Lender and each such financial institution, and without any further notice as otherwise required in this Section. Each New Vehicle Floorplan Swing Line Loan made pursuant to a Payoff Letter Commitment shall be a ~~Eurodollar Rate~~[Daily Simple SOFR](#) Loan at the time of such Borrowing, but may be converted to a Base Rate Loan in accordance with the terms of this Agreement. The New Vehicle Borrowers shall be and remain jointly and severally liable to the New Vehicle Floorplan Swing Line Lender, or the New Vehicle Floorplan Lenders, as applicable, for all payments made to a financial institution pursuant to a Payoff Letter Commitment.

(c) Borrowing Procedures. Each New Vehicle Floorplan Swing Line Borrowing shall be made pursuant to (i) a Payment Commitment, (ii) a Payoff Letter Commitment, or (iii) in the case of a dealer trade, bulk purchase or other purchase of any New Vehicle, pursuant to the Floorplan On-line System in accordance with practices agreed to from time to time between the New Vehicle Floorplan Swing Line Lender and the applicable New Vehicle Borrower, including requirements that the Company or applicable New Vehicle Borrower shall have entered information relating to the applicable New Vehicles (including the dollar amount of such Loans and the make, model and vehicle identification number of such New Vehicles) into the Floorplan On-Line System. The New Vehicle Floorplan Swing Line Lender will promptly make the amount of its New Vehicle Floorplan Swing Line Loan available directly to the manufacturer or distributor pursuant to a Payment Commitment in accordance with industry practices, to the financial institution pursuant to a Payoff Letter Commitment, or to the applicable New Vehicle Borrower by crediting the account of such New Vehicle Borrower. In the case of a dealer trade, bulk purchase or other purchase of any New Vehicle, funds will be credited to the applicable New Vehicle Borrower's deposit account at the following times depending on whether the deposit account is maintained at Bank of America and when the request is entered pursuant to the Floorplan On-Line System:

(i) if the deposit account is maintained at Bank of America, the funds will be credited to the account (A) on the same Business Day if the request is entered prior to 7:00 p.m. on that day, or (B) on the next Business Day if the request is entered at or after 7:00 p.m. or is entered on a day that is not a Business Day; and

(ii) if the deposit account is maintained at any Person other than Bank of America, the funds will be credited to the account (A) on the following Business Day if the request is received prior to 7:00 p.m. on a Business Day, or (B) two Business Days later if the request is entered at or after 7:00 p.m. or is entered on a day that is not a Business Day.

In either case of clause (i) or (ii), interest shall not accrue on such funds until they are deposited to such applicable deposit account.

If a Payment Commitment, Payoff Letter Commitment or the Floorplan On-Line System (as applicable) fails to specify the Type of New Vehicle Floorplan Swing Line Loan, the applicable New Vehicle Floorplan Swing Line Loan shall be made as a ~~Eurodollar Rate~~ Daily Simple SOFR Loan. Each conversion of New Vehicle Swing Line Loans from one Type to the other shall be pursuant to an irrevocable notice to the New Vehicle Floorplan Swing Line Lender by delivery of a New Vehicle Floorplan Swing Line Loan Notice appropriately completed and signed by a Responsible Officer of the Company. If the Company fails to provide a timely New Vehicle Floorplan Swing Line Loan Notice requesting a conversion of ~~Eurodollar Rate~~ Daily Simple SOFR Loans to Base Rate Loans, such Loans shall continue as ~~Eurodollar Rate~~ Daily Simple SOFR Loans. Notwithstanding anything herein to the contrary, after giving effect to any Borrowing or conversion, all outstanding New Vehicle Floorplan Loans of the Company and the New Vehicle Borrowers must be of the same Type.

(d) Asbury New Vehicle Control Period Balances. If at any time during an Asbury New Vehicle Control Period (i) the amount of any repayment of New Vehicle Floorplan Swing Line Loans exceeds (ii) an amount equal to the Outstanding Amount of New Vehicle Floorplan Swing Line Loans (such excess of the amount in clause (i) over the amount in clause (ii) being referred to as the “Negative New Vehicle Swing Line Balance”), the Outstanding Amount of such New Vehicle Floorplan Swing Line Loans shall be reduced by the amount of such repayment, and (Y) the Negative New Vehicle Swing Line Balance shall be held by the New Vehicle Swing Line Lender to prepay subsequent New Vehicle Floorplan Swing Line Loans or, (Z) if and when the Company submits a notice of prepayment of New Vehicle Committed Loans pursuant to Section 2.13(c), the Negative New Vehicle Swing Line Balance may be used to prepay such New Vehicle Floorplan Committed Loans. Until the Company submits such notice and such Loans are prepaid in accordance with clause (Z), such New Vehicle Floorplan Committed Loans shall continue to accrue interest as otherwise set forth in this Agreement; provided that, with respect to New Vehicle Floorplan Committed Loans in a principal amount equal to the Negative New Vehicle Swing Line Balance, the interest on such portion (the “Specified Committed Loan Interest”) shall be collected by the New Vehicle Floorplan Swing Line Lender (at the rate then applicable to New Vehicle Floorplan Committed Loans), with such amounts billed monthly and subsequently withdrawn by the New Vehicle Swing Line Lender from the Company’s bank account with Bank of America five (5) Business Days after delivery of such bill. The New Vehicle Swing Line Lender and the Administrative Agent shall agree on procedures so that (either prior to or promptly after the collection thereof) the New Vehicle Swing Line Lender shall turn over to the Administrative Agent the Specified Committed Loan Interest for application to the New Vehicle Floorplan Committed Loans.

(e) Authorization. Each New Vehicle Borrower and the Company authorizes the New Vehicle Floorplan Swing Line Lender (and each New Vehicle Floorplan Lender consents to such authorization), in consultation with the Company, to enter into, modify or terminate Payment Commitments and Payoff Letter Commitments (in each case, in the New Vehicle Floorplan Swing Line Lender’s discretion) and to advise each manufacturer or distributor or financial institution, as the case may be, that provides New Vehicles to such New Vehicle Borrower of any change or termination which may occur with respect to the New Vehicle Floorplan Swing Line.



(f) Refinancing of New Vehicle Floorplan Swing Line Loans.

(i) The New Vehicle Floorplan Swing Line Lender at any time in its sole and absolute discretion may request (and during an Asbury New Vehicle Control Period, upon direction of the Company shall request), on behalf of the New Vehicle Borrowers (which hereby irrevocably authorize the New Vehicle Floorplan Swing Line Lender to so request on their behalf), that each New Vehicle Floorplan Lender make a ~~Eurodollar Rate~~Daily Simple SOFR Committed Loan in an amount equal to such Lender's Applicable New Vehicle Floorplan Percentage of the amount of New Vehicle Floorplan Swing Line Loans that the New Vehicle Floorplan Swing Line Lender (or the Company, during an Asbury New Vehicle Control Period), in its sole discretion chooses to refinance (including, subject to Section 2.08(b)(iv), any New Vehicle Floorplan Overdrafts). The New Vehicle Floorplan Swing Line Lender intends to request each New Vehicle Floorplan Lender to make such ~~Eurodollar Rate~~Daily Simple SOFR Committed Loans no less frequently than once in any given calendar month. Such request shall be made in writing (which written request shall be deemed to be a New Vehicle Floorplan Committed Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.06, without regard to the minimum and multiples specified therein for the principal amount of ~~Eurodollar Rate~~Daily Simple SOFR Loans, but subject to the unutilized portion of the Aggregate New Vehicle Floorplan Commitments and the conditions set forth in Section 4.02. Each New Vehicle Floorplan Lender shall make an amount equal to its Applicable New Vehicle Floorplan Percentage of the amount specified in such New Vehicle Floorplan Committed Loan Notice available to the Administrative Agent in immediately available funds for the account of the New Vehicle Floorplan Swing Line Lender at the Administrative Agent's Office not later than 1:00 p.m. on the day specified in such New Vehicle Floorplan Committed Loan Notice (or, if later, one Business Day after the New Vehicle Swing Line Lender delivers such notice), whereupon, subject to Section 2.08(b)(iv), each New Vehicle Floorplan Lender that so makes funds available shall be deemed to have made a ~~Eurodollar Rate~~Daily Simple SOFR Committed Loan to the Company in such amount. The Administrative Agent shall remit the funds so received to the New Vehicle Floorplan Swing Line Lender.

(ii) If for any reason any New Vehicle Floorplan Swing Line Loan (other than a New Vehicle Floorplan Overdraft) cannot be refinanced by such a New Vehicle Floorplan Committed Borrowing in accordance with Section 2.07(c)(i), the request for ~~Eurodollar Rate~~Daily Simple SOFR New Vehicle Floorplan Committed Loans submitted by the New Vehicle Floorplan Swing Line Lender as set forth herein shall be deemed to be a request by the New Vehicle Floorplan Swing Line Lender that each of the New Vehicle Floorplan Lenders fund its risk participation in the relevant New Vehicle Floorplan Swing Line Loan and each Lender's payment to the Administrative Agent for the account of the New Vehicle Floorplan Swing Line Lender pursuant to Section 2.07(c)(i) shall be deemed payment in respect of such participation.

(iii) If any New Vehicle Floorplan Lender fails to make available to the Administrative Agent for the account of the New Vehicle Floorplan Swing Line Lender any amount required to be paid by such New Vehicle Floorplan Lender pursuant to the foregoing provisions of this Section 2.07(c) by the time specified in Section 2.07(c)(i), the New Vehicle Floorplan Swing Line Lender shall be entitled to recover from such New Vehicle Floorplan Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the New Vehicle Floorplan Swing Line Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the New Vehicle Floorplan Swing Line Lender in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees charged by the New Vehicle Swing Line Lender in connection with the foregoing. If such New Vehicle Floorplan Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such New Vehicle Floorplan Lender's New Vehicle Floorplan Committed Loan included in the relevant New Vehicle Floorplan Committed Borrowing or funded participation in the relevant New Vehicle Floorplan Swing Line Loan, as the case may be. A certificate of the New Vehicle Floorplan Swing Line Lender submitted to any New Vehicle Floorplan Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each New Vehicle Floorplan Lender's obligation to make New Vehicle Floorplan Committed Loans or to purchase and fund risk participations in New Vehicle Floorplan Swing Line Loans pursuant to this Section 2.07(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such New Vehicle Floorplan Lender may have against the New Vehicle Floorplan Swing Line Lender, the Company or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each New Vehicle Floorplan Lender's obligation to make New Vehicle Floorplan Committed Loans pursuant to this Section 2.07(c) is subject to the conditions set forth in Section 4.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the New Vehicle Borrowers (jointly and severally) to repay New Vehicle Floorplan Swing Line Loans, together with interest as provided herein.

(g) Repayment of Participations.

(i) At any time after any New Vehicle Floorplan Lender has purchased and funded a risk participation in a New Vehicle Floorplan Swing Line Loan, if the New Vehicle Floorplan Swing Line Lender receives any payment on account of such New Vehicle Floorplan Swing Line Loan, the New Vehicle Floorplan Swing Line Lender will distribute to such Lender its Applicable New Vehicle Floorplan Percentage of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's risk participation was funded) in the same funds as those received by the New Vehicle Floorplan Swing Line Lender.

(ii) If any payment received by the New Vehicle Floorplan Swing Line Lender in respect of principal or interest on any New Vehicle Floorplan Swing Line Loan (other than a New Vehicle Floorplan Overdraft) is required to be returned by the New Vehicle Floorplan Swing Line Lender under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the New Vehicle Floorplan Swing Line Lender in its discretion), each New Vehicle Floorplan Lender shall pay to the New Vehicle Floorplan Swing Line Lender its Applicable New Vehicle Floorplan Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. The Administrative Agent will make such demand upon the request of the New Vehicle Floorplan Swing Line Lender. The obligations of the New Vehicle Floorplan Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(h) Interest for Account of New Vehicle Floorplan Swing Line Lender. The New Vehicle Floorplan Swing Line Lender shall be responsible for invoicing the New Vehicle Borrowers for interest on the New Vehicle Floorplan Swing Line Loans. Until each New Vehicle Floorplan Lender funds its ~~Eurodollar Rate~~ Daily Simple SOFR Committed Loan or risk participation pursuant to this Section 2.07 to refinance such Lender's Applicable New Vehicle Floorplan Percentage of any New Vehicle Floorplan Swing Line Loan, interest in respect of such Applicable New Vehicle Floorplan Percentage shall be solely for the account of the New Vehicle Floorplan Swing Line Lender.

(i) Payments Directly to New Vehicle Floorplan Swing Line Lender. Each New Vehicle Borrower shall make all payments of principal and interest in respect of the New Vehicle Floorplan Swing Line Loans directly to the New Vehicle Floorplan Swing Line Lender.

## 2.08 New Vehicle Floorplan Overdrafts

. Notwithstanding the foregoing provisions of Sections 2.05, 2.06 and 2.07,

(a) if the New Vehicle Floorplan Swing Line Lender has (acting in its discretion), according to the terms hereof, taken action to suspend or terminate Payment Commitments and/or Payoff Letter Commitments and such Payment Commitments and/or Payoff Letter Commitments, as the case may be, have in fact been suspended or terminated in accordance with their respective terms, then the New

Vehicle Floorplan Swing Line Lender shall not fund any draft with respect to such Payment Commitments and/or Payoff Letter Commitments;

(b) if on any day the conditions precedent set forth in Section 4.03 have been satisfied and a draft with respect to a Payment Commitment or a Payoff Letter Commitment is presented for payment, the payment of which would cause (i) (A) the Outstanding Amount of all New Vehicle Floorplan Committed Loans, plus (B) the Outstanding Amount of all New Vehicle Floorplan Swing Line Loans, plus (C) the aggregate principal amount of all Requests for Credit Extensions of New Vehicle Floorplan Loans outstanding as of such day to exceed the Aggregate New Vehicle Floorplan Commitments as of such day or (ii) the Outstanding Amount of New Vehicle Floorplan Swing Line Loans to exceed the New Vehicle Floorplan Swing Line Sublimit, then, in such event:

(i) the Company or any New Vehicle Borrower may either immediately reduce any pending Requests for Credit Extensions (if any) of a New Vehicle Floorplan Committed Loan or make a payment of principal on New Vehicle Floorplan Committed Loans and/or New Vehicle Floorplan Swing Line Loans in an amount which would prevent the aggregate amounts described in (A), (B) and (C) above from exceeding the Aggregate New Vehicle Floorplan Commitments; or

(ii) the Company may request an increase in the Aggregate New Vehicle Floorplan Commitments pursuant to Section 2.22, and such Payment Commitment or Payoff Letter Commitment shall be funded to the extent of such increase in accordance with said Section; or

(iii) regardless of whether the conditions of Sections 4.02 and 4.03 have otherwise been met, the New Vehicle Floorplan Swing Line Lender may in its sole and absolute discretion, but shall not be obligated to, fund the payment due under such Payment Commitment or Payoff Letter Commitment in whole or in part (the amount of any such funding made by the New Vehicle Floorplan Swing Line Lender, the "New Vehicle Floorplan Overdraft"). Nothing in this Agreement shall be construed as a commitment by or as requiring the New Vehicle Floorplan Swing Line Lender to fund any such New Vehicle Floorplan Overdraft; or

(iv) within five (5) Business Days after funding a New Vehicle Floorplan Overdraft, if the conditions to making a New Vehicle Floorplan Committed Loan are satisfied, the New Vehicle Floorplan Swing Line Lender (or, during any Asbury New Vehicle Control Period, the Company) shall request a New Vehicle Floorplan Committed Borrowing pursuant to Section 2.06(a) in an amount equal to the lesser of (i) the amount of such New Vehicle Floorplan Overdraft and (ii) the maximum amount then available to be borrowed under the New Vehicle Floorplan Commitments, and such New Vehicle Floorplan Committed Borrowing shall be applied to refinance the amount of such New Vehicle Floorplan Overdraft (or portion thereof, applicable).

## **2.09 Electronic Processing and New Vehicle Floorplan Offset Account**

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(a) Electronic Processing. The New Vehicle Borrowers may request New Vehicle Floorplan Loans electronically by access to Administrative Agent's web based floorplan on-line system ("Floorplan On-line System") in accordance with and subject to the terms and conditions established between the Administrative Agent, the New Vehicle Floorplan Swing Line Lender and the Company from time to time. In connection with the New Vehicle Floorplan Facility, interest, curtailments and other payments pursuant to Section 2.16(b) or 2.18(b) or the Fee Letter or otherwise in respect of each New Vehicle, shall be automatically debited (i) if the applicable New Vehicle Borrower's account is with Bank of America, on the Automatic Debit Date of each month and (ii) if the applicable New Vehicle Borrower's account is not with Bank of America, one Business Day prior to the Automatic Debit Date of each month, in each case, pursuant to on-line procedures established and agreed to from time to time between such New

Vehicle Borrower, the Administrative Agent and the New Vehicle Floorplan Swing Line Lender, including without limitation, automatic debits to cure Out of Balance conditions pursuant to Section 8.04. The New Vehicle Borrowers have requested access to the Floorplan On-line System to retrieve monthly bills, to permit the New Vehicle Borrowers to access certain account information relating to the New Vehicle Floorplan Loans and to facilitate the making of any payments or advances on the New Vehicle Floorplan Loans by authorizing the Administrative Agent and the New Vehicle Floorplan Swing Line Lender to debit or credit any one or more of the New Vehicle Borrowers' deposit accounts with the Administrative Agent or the New Vehicle Floorplan Swing Line Lender. In consideration for the Administrative Agent's and the New Vehicle Floorplan Swing Line Lender's granting to the New Vehicle Borrowers access to the Floorplan On-line System to view loan account information and make payments, the New Vehicle Borrowers acknowledge responsibility for the security of such New Vehicle Borrowers' passwords and other information necessary for access to Floorplan On-line System, and the Company and each New Vehicle Borrower fully, finally, and forever releases and discharges the Administrative Agent, the New Vehicle Floorplan Swing Line Lender and their employees, agents, and representatives from any and all causes of action, claims, debts, demands, and liabilities, of whatever kind or nature, in law or equity that the Company or any New Vehicle Borrower may now or hereafter have, in any way relating to the Company or any New Vehicle's Borrower's access to, or use of, the Floorplan On-line System, other than those arising out of the gross negligence, bad faith or willful misconduct of the Administrative Agent or the New Vehicle Floorplan Swing Line Lender.

(b) New Vehicle Floorplan Offset Account.

(i) Creation of Account. The Administrative Agent has established for the New Vehicle Borrowers a flooring line aggregate interest reduction account (the "New Vehicle Floorplan Offset Account"). The New Vehicle Floorplan Offset Account is not a deposit account, and the New Vehicle Borrowers shall have no right or interest in any amounts in such account. The New Vehicle Floorplan Offset Account is intended to permit voluntary reductions in the principal amount of New Vehicle Floorplan Loans outstanding under this Agreement. Any amounts paid by the New Vehicle Borrowers into the New Vehicle Floorplan Offset Account will be available for re-advance to the New Vehicle Borrowers only in accordance with this Section 2.09(b).

(ii) Payments and Advances. The New Vehicle Borrowers may, at their discretion, make payments to the New Vehicle Floorplan Offset Account, which payments shall represent and be deemed to be prepayments of New Vehicle Floorplan Loans for the pro rata benefit of the New Vehicle Floorplan Lenders, provided that the Company shall notify the Administrative Agent of each such payment (which notification shall be made either before or promptly after such payment and may be accomplished through an electronic system acceptable to the Administrative Agent). The Administrative Agent may, in its sole discretion, distribute to Lenders as an actual prepayment of their outstanding New Vehicle Floorplan Loans any amounts received into the New Vehicle Floorplan Offset Account, provided that such distributions shall not be deemed to reduce the size of the New Vehicle Floorplan Offset Account. So long as there is no continuing Default under this Agreement, amounts in the New Vehicle Floorplan Offset Account may be readvanced to the New Vehicle Borrowers (each such readvance, a "New Vehicle Floorplan Offset Account Advance") upon request by the Company, provided that the Company shall promptly notify the Administrative Agent of each such New Vehicle Floorplan Offset Account Advance (which notification shall be made either before or promptly after such New Vehicle Floorplan Offset Account Advance and may be accomplished through an electronic system acceptable to the Administrative Agent). The New Vehicle Floorplan Offset Account Advances shall be subject to all the terms and conditions of this Section 2.09(b). Each New Vehicle Floorplan Offset Account Advance shall be made as a Daily Simple SOFR Loan, subject to conversion to a different Type in accordance with the terms of this Agreement. Each payment to the New Vehicle Floorplan Offset Account and each New Vehicle Floorplan Offset Account Advance shall be in an amount of at least \$1,000,000; and the aggregate number of payments into the New Vehicle Floorplan Offset Account plus New Vehicle Floorplan Offset Account Advances shall not exceed eight (8) in any calendar month. The amount credited to the New Vehicle Floorplan Offset Account shall be reduced by the amount of New Vehicle Floorplan Offset Account Advances from time to time.

(iii) Application to Reduce Principal. For purposes of computing the interest due with respect to Total New Vehicle Floorplan Outstandings for any day, the Outstanding Amount of New Vehicle Floorplan Loans on such day shall be reduced by the Floorplan Offset Amount as of the close of business on such day (such reduction, the “Applicable Floorplan Principal Reduction”) and interest will be determined as provided in Section 2.16(b); provided, however, notwithstanding the amount on deposit in the New Vehicle Floorplan Offset Account at any time, the maximum amount of the Applicable Floorplan Principal Reduction under this Section 2.09 for any day shall be limited to an amount equal to the Outstanding Amount of New Vehicle Floorplan Loans on such day. Notwithstanding anything herein to the contrary: (A) the Applicable Floorplan Principal Reduction on any day: (1) shall be deemed to reduce the Outstanding Amount of New Vehicle Floorplan Committed Loans for purposes of calculating the commitment fee for such day under Section 2.17 and (2) (to the extent that amounts in the New Vehicle Floorplan Offset Account have been distributed to any Lenders as a prepayment of their New Vehicle Floorplan Loans) shall reduce the Outstanding Amount of New Vehicle Floorplan Loans for purposes of determining any remaining availability under the New Vehicle Floorplan Commitment; and (B) the Applicable Floorplan Principal Reduction shall not: (1) limit or modify any principal payment requirements; (2) be used for the satisfaction of any curtailment requirements or (3) modify any other terms set forth elsewhere in this Agreement.

(iv) Termination of New Vehicle Floorplan Offset Account. At any time, upon ten days written notice to the Company, the Administrative Agent may terminate the New Vehicle Floorplan Offset Account provided by this Section 2.09(b) if the Administrative Agent determines, in its reasonable discretion, that continuation of the New Vehicle Floorplan Offset Account would have an adverse effect on the Administrative Agent or any New Vehicle Floorplan Lender. In addition, the Administrative Agent may terminate the New Vehicle Floorplan Offset Account without prior notice upon the occurrence and during the continuance of any Event of Default. Upon any such termination of the New Vehicle Floorplan Offset Account, the amounts on deposit therein shall be applied to the prepayment of New Vehicle Floorplan Loans under Section 2.13, or, at the option of the Company, so long as no Event of Default has occurred and is continuing, remitted to the Company on behalf of the New Vehicle Borrowers.

## **2.10 Used Vehicle Floorplan Committed Loans**

. Subject to the terms and conditions set forth herein, each Used Vehicle Floorplan Lender severally agrees to make loans (each such loan, a “Used Vehicle Floorplan Committed Loan”) to the Used Vehicle Borrowers from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Used Vehicle Floorplan Lender’s Used Vehicle Floorplan Commitment; provided, however, that after giving effect to any Used Vehicle Floorplan Committed Borrowing, (i) the Total Outstandings shall not exceed the Aggregate Commitments, (ii) the Total Used Vehicle Floorplan Outstandings shall not exceed the lesser of the Aggregate Used Vehicle Floorplan Commitments or the Used Vehicle Floorplan Borrowing Base, and (iii) the aggregate Outstanding Amount of the Used Vehicle Floorplan Committed Loans of any Used Vehicle Floorplan Lender, plus such Lender’s Applicable Used Vehicle Floorplan Percentage of the Outstanding Amount of all Used Vehicle Floorplan Swing Line Loans shall not exceed such Lender’s Used Vehicle Floorplan Commitment. Within the limits of each Used Vehicle Floorplan Lender’s Used Vehicle Floorplan Commitment, and subject to the other terms and conditions hereof, the Used Vehicle Borrowers may borrow under this Section 2.10, prepay under Section 2.13, and reborrow under this Section 2.10. Used Vehicle Floorplan Committed Loans may be Base Rate Loans or ~~Eurodollar Rate~~ Daily Simple SOFR Loans, as further provided herein.

## **2.11 Borrowings, Conversions and Continuations of Used Vehicle Floorplan Committed Loans.**

(a) Each Used Vehicle Floorplan Committed Borrowing and each conversion of Used Vehicle Floorplan Committed Loans from one Type to the other, shall be made upon the Company’s irrevocable notice to the Administrative Agent, which may be given by (A) telephone, or (B) a Used Vehicle Floorplan Committed Loan Notice; provided that any telephonic notice must be confirmed promptly by delivery to the Administrative Agent of a Used Vehicle Floorplan Committed Loan Notice.

Each such Used Vehicle Floorplan Committed Loan Notice must be received by the Administrative Agent not later than 1:00 p.m. (i) one Business Day prior to the requested date of any Used Vehicle Floorplan Borrowing of ~~Eurodollar Rate~~Daily Simple SOFR Loans or of any conversion of ~~Eurodollar Rate~~Daily Simple SOFR Loans to Base Rate Committed Loans or of any conversion of Base Rate Committed Loans to ~~Eurodollar Rate~~Daily Simple SOFR Loans, and (ii) one Business Day prior to the requested date of any Borrowing of Base Rate Committed Loans. Each Borrowing of or conversion to ~~Eurodollar Rate~~Daily Simple SOFR Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof. Except as provided in Section 2.11(c), each Borrowing of or conversion to Base Rate Committed Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof. Each Used Vehicle Floorplan Committed Loan Notice shall specify (i) whether the Company is requesting a Used Vehicle Floorplan Committed Borrowing, a conversion of Used Vehicle Floorplan Committed Loans from one Type to the other, (ii) the requested date of the Borrowing or conversion, as the case may be (which shall be a Business Day), (iii) the principal amount of Used Vehicle Floorplan Committed Loans to be borrowed or converted, (iv) the Type of Used Vehicle Floorplan Committed Loans to be borrowed or to which existing Used Vehicle Floorplan Committed Loans are to be converted and (v) the applicable Borrower. If the Company fails to provide a timely Used Vehicle Floorplan Committed Loan Notice requesting a conversion of ~~Eurodollar Rate~~Daily Simple SOFR Loans to Base Rate Loans, such Loans shall, subject to Article III, continue as ~~Eurodollar Rate~~Daily Simple SOFR Loans. If the Company fails to specify a Type of Used Vehicle Floorplan Committed Loan in a Used Vehicle Floorplan Committed Loan Notice, then the applicable Used Vehicle Floorplan Committed Loans shall, subject to Article III, be made as, or converted to, ~~Eurodollar Rate~~Daily Simple SOFR Loans.

(b) Following receipt of a Used Vehicle Floorplan Committed Loan Notice, the Administrative Agent shall promptly notify each Used Vehicle Floorplan Lender of the amount of its Applicable Used Vehicle Floorplan Percentage of the applicable Used Vehicle Floorplan Committed Loans. Each Lender shall make the amount of its Used Vehicle Floorplan Committed Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Used Vehicle Floorplan Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is an initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the applicable Borrower in like funds as received by the Administrative Agent by crediting the account of such Borrower on the books of Bank of America with the amount of such funds.

~~(c) The Administrative Agent shall promptly notify the Company and the Used Vehicle Floorplan Lenders of the interest rate applicable to any Eurodollar Rate Loans upon determination of such interest rate.~~ At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Company and the Used Vehicle Floorplan Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

## **2.12 Used Vehicle Floorplan Swing Line Loans.**

(a) The Used Vehicle Floorplan Swing Line. Subject to the terms and conditions set forth herein and in the Used Vehicle Autoborrow Agreement, the Used Vehicle Floorplan Swing Line Lender agrees, in reliance upon the agreements of the other Used Vehicle Floorplan Lenders set forth in this Section 2.12, to make loans (each such loan, a "Used Vehicle Floorplan Swing Line Loan") to the Company from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Used Vehicle Floorplan Swing Line Sublimit, notwithstanding the fact that such Used Vehicle Floorplan Swing Line Loans, when aggregated with the Applicable Used Vehicle Floorplan Percentage of the Outstanding Amount of Used Vehicle Floorplan Committed Loans of the Used Vehicle Floorplan Lender acting as Used Vehicle Floorplan Swing Line Lender, may exceed the amount of such Used Vehicle Floorplan Lender's Used Vehicle Floorplan Commitment; provided, however, that (i) after giving effect to any Used Vehicle Floorplan Swing Line Loan (x) the Total Outstandings shall not exceed the Aggregate Commitments, (y) the Total Used Vehicle Floorplan Outstandings shall not exceed the lesser of the Aggregate Used Vehicle Floorplan Commitments or the Used Vehicle Floorplan Borrowing Base, and (z) the aggregate Outstanding Amount of the Used Vehicle Floorplan Committed Loans of any Used Vehicle Floorplan Lender, plus such Lender's Applicable Used Vehicle Floorplan Percentage of the Outstanding Amount of all Used Vehicle Floorplan Swing Line Loans shall not exceed such Lender's Used Vehicle Floorplan Commitment, and

(ii) the Used Vehicle Floorplan Swing Line Lender shall not be under any obligation to make any such Used Vehicle Floorplan Swing Line Loan if any Lender is at such time a Defaulting Lender, unless the Used Vehicle Floorplan Swing Line Lender has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the Used Vehicle Floorplan Swing Line Lender (in its sole discretion) with the Company or such Defaulting Lender to eliminate such Used Vehicle Floorplan Swing Line Lender's actual or potential Fronting Exposure (after giving effect to [Section 2.27\(a\)\(iv\)](#)) with respect to the Defaulting Lender arising from either the Used Vehicle Floorplan Swing Line Loan then proposed to be made or that Used Vehicle Floorplan Swing Line Loan and all other Used Vehicle Floorplan Swing Line Loans then outstanding as to which the Used Vehicle Floorplan Swing Line Lender has actual or potential Fronting Exposure, as it may elect in its sole discretion; and provided, further, that (subject to the terms of any Used Vehicle Autoborrow Agreement that may be in effect) the Company shall not use the proceeds of any Used Vehicle Floorplan Swing Line Loan to refinance any outstanding Used Vehicle Floorplan Swing Line Loan. Within the foregoing limits, and subject to the other terms and conditions hereof, the Company, may borrow under this [Section 2.12](#), prepay under [Section 2.13](#), and reborrow under this [Section 2.12](#). Each Used Vehicle Floorplan Swing Line Loan may be a Base Rate Loan or a ~~Eurodollar Rate~~[Daily Simple SOFR](#) Loan. Immediately upon the making of a Used Vehicle Floorplan Swing Line Loan, each Used Vehicle Floorplan Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Used Vehicle Floorplan Swing Line Lender a risk participation in such Used Vehicle Floorplan Swing Line Loan in an amount equal to the product of such Lender's Applicable Used Vehicle Floorplan Percentage times the amount of such Used Vehicle Floorplan Swing Line Loan.

(b) Borrowing Procedures. At any time a Used Vehicle Autoborrow Agreement is not in effect, each Used Vehicle Floorplan Swing Line Borrowing and each conversion of Used Vehicle Floorplan Swing Line Loans from one type to the other shall be made upon the Company's irrevocable notice to the Used Vehicle Swing Line Lender and the Administrative Agent, which may be given by (A) telephone or (B) by a Used Vehicle Floorplan Swing Line Loan Notice. Each such Used Vehicle Floorplan Swing Line Loan Notice must be received by the Used Vehicle Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the requested borrowing date or date of any conversion of ~~Eurodollar Rate~~[Daily Simple SOFR](#) Loans to Base Rate Loans or of any conversion of Base Rate Loans to ~~Eurodollar Rate~~[Daily Simple SOFR](#) Loans, and in each case shall specify (i) the amount to be borrowed, which shall be a minimum of \$100,000, (ii) the requested borrowing date, which shall be a Business Day and (iii) the Type of Used Vehicle Floorplan Swing Line Loan to be borrowed or to which existing Used Vehicle Floorplan Swing Line Loans are to be converted. Promptly after receipt by the Used Vehicle Swing Line Lender of any Used Vehicle Floorplan Swing Line Loan Notice, the Used Vehicle Swing Line Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Used Vehicle Floorplan Swing Line Loan Notice and, if not, the Used Vehicle Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Used Vehicle Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Used Vehicle Floorplan Lender) prior to 2:00 p.m. on the date of the proposed Used Vehicle Floorplan Swing Line Borrowing (A) directing the Used Vehicle Swing Line Lender not to make such Used Vehicle Floorplan Swing Line Loan as a result of the limitations set forth in the proviso to the first sentence of [Section 2.12\(a\)](#), or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Used Vehicle Swing Line Lender will, not later than 3:00 p.m. on the borrowing date specified in such Used Vehicle Floorplan Swing Line Loan Notice, make the amount of its Used Vehicle Floorplan Swing Line Loan available to the Company at its office by crediting the account of the Company on the books of the Used Vehicle Swing Line Lender in immediately available funds. If the Company fails to provide a timely Used Vehicle Floorplan Swing Line Loan Notice requesting a conversion of ~~Eurodollar Rate~~[Daily Simple SOFR](#) Loans to Base Rate Loans, such Loans shall, subject to Article III, continue as ~~Eurodollar Rate~~[Daily Simple SOFR](#) Loans. If the Company fails to specify a Type of Used Vehicle Floorplan Swing Line Loan in a Used Vehicle Floorplan Swing Line Loan Notice, then the applicable Used Vehicle Floorplan Swing Line Loan shall, subject to Article III, be made as a ~~Eurodollar Rate~~[Daily Simple SOFR](#) Loan.

In order to facilitate the borrowing of Used Vehicle Floorplan Swing Line Loans, the Company and the Used Vehicle Floorplan Swing Line Lender may mutually agree to, and are hereby authorized to, enter into an Autoborrow Agreement in form and substance reasonably satisfactory to the Administrative

Agent and the Used Vehicle Floorplan Swing Line Lender (the “Used Vehicle Autoborrow Agreement”) providing for the automatic advance by the Used Vehicle Floorplan Swing Line Lender of Used Vehicle Floorplan Swing Line Loans under the conditions set forth in such agreement, which shall be in addition to the conditions set forth herein (each such advance, a “Used Vehicle Autoborrow Advance”); provided that, (i) in no event shall the Company be entitled to Used Vehicle Autoborrow Advances pursuant to a Used Vehicle Autoborrow Agreement at any time a Revolving Autoborrow ~~Agreement or a New Vehicle Floorplan Offset~~ Agreement is in place and (ii) the Company may, once per calendar year and upon 30 days advance notice to the Administrative Agent and the Used Vehicle Floorplan Swing Line Lender and upon the payment to the Administrative Agent of a \$10,000 fee (which fee may be waived in the sole discretion of the Administrative Agent), alternate ~~(x)~~ between having a Revolving Autoborrow Agreement, or a Used Vehicle Autoborrow Agreement ~~or a New Vehicle Floorplan Offset Agreement in place, or (y) between having a New Vehicle Floorplan Offset Agreement (with a New Vehicle Automated Sweep Agreement) or a New Vehicle Floorplan Offset Agreement (without a New Vehicle Automated Sweep Agreement)~~ in place. At any time such a Used Vehicle Autoborrow Agreement is in effect, the requirements for Used Vehicle Floorplan Swing Line Borrowings set forth in the immediately preceding paragraph shall not apply, and all Used Vehicle Floorplan Swing Line Borrowings shall be made in accordance with the Used Vehicle Autoborrow Agreement, until the right to such Used Vehicle Floorplan Swing Line Borrowings is suspended or terminated hereunder or in accordance with the terms of the Used Vehicle Autoborrow Agreement. Solely for purposes of determining the availability of Used Vehicle Floorplan Committed Loans (other than Used Vehicle Floorplan Committed Loans used to refinance Used Vehicle Floorplan Swing Line Loans) and for determining the Total Used Vehicle Floorplan Outstandings in connection with Section 2.14, at any time during which a Used Vehicle Autoborrow Agreement is in effect, the Outstanding Amount of all Used Vehicle Floorplan Swing Line Loans shall be deemed to be the amount of the Used Vehicle Floorplan Swing Line Sublimit. For purposes of any Used Vehicle Floorplan Swing Line Borrowing pursuant to the Used Vehicle Autoborrow Agreement, all references to Bank of America shall be deemed to be a reference to Bank of America, in its capacity as Used Vehicle Floorplan Swing Line Lender hereunder.

(c) Refinancing of Used Vehicle Floorplan Swing Line Loans.

(i) The Used Vehicle Floorplan Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the Company (which hereby irrevocably authorizes the Used Vehicle Floorplan Swing Line Lender to so request on its behalf), that each Used Vehicle Floorplan Lender make a ~~Eurodollar Rate~~Daily Simple SOFR Committed Loan in an amount equal to such Used Vehicle Floorplan Lender’s Applicable Used Vehicle Floorplan Percentage of the amount of Used Vehicle Floorplan Swing Line Loans then outstanding; provided that the Used Vehicle Floorplan Swing Line Lender intends to request each Used Vehicle Floorplan Lender to make such ~~Eurodollar Rate~~Daily Simple SOFR Committed Loans no less frequently than once in any given calendar month. Such request shall be made in writing (which written request shall be deemed to be a Used Vehicle Floorplan Committed Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.11, without regard to the minimum and multiples specified therein for the principal amount of ~~Eurodollar Rate~~Daily Simple SOFR Loans, but subject to the unutilized portion of the Aggregate Used Vehicle Floorplan Commitments and the conditions set forth in Section 4.02. Each Used Vehicle Floorplan Lender shall make an amount equal to its Applicable Used Vehicle Floorplan Percentage of the amount specified in such Used Vehicle Floorplan Committed Loan Notice available to the Administrative Agent in immediately available funds (and the Administrative Agent may apply Cash Collateral available with respect to the applicable Used Vehicle Floorplan Swing Line Loan) for the account of the Used Vehicle Floorplan Swing Line Lender at the Administrative Agent’s Office not later than 1:00 p.m. on the day specified in such Used Vehicle Floorplan Committed Loan Notice (or, if later, one Business Day after the Used Vehicle Floorplan Swing Line Lender delivers such notice), whereupon, subject to Section 2.12(c)(ii), each Used Vehicle Floorplan Lender that so makes funds available shall be deemed to have made a ~~Eurodollar Rate~~Daily Simple SOFR Committed Loan to the Company in such amount. The Administrative Agent shall remit the funds so received to the Used Vehicle Floorplan Swing Line Lender.



(ii) If for any reason any Used Vehicle Floorplan Swing Line Loan cannot be refinanced by such a Used Vehicle Floorplan Committed Borrowing in accordance with Section 2.12(c)(i), the request for ~~Eurodollar Rate~~ Daily Simple SOFR Used Vehicle Floorplan Committed Loans submitted by the Used Vehicle Floorplan Swing Line Lender as set forth herein shall be deemed to be a request by the Used Vehicle Floorplan Swing Line Lender that each of the Used Vehicle Floorplan Lenders fund its risk participation in the relevant Used Vehicle Floorplan Swing Line Loan and each Lender's payment to the Administrative Agent for the account of the Used Vehicle Floorplan Swing Line Lender pursuant to Section 2.12(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Used Vehicle Floorplan Lender fails to make available to the Administrative Agent for the account of the Used Vehicle Floorplan Swing Line Lender any amount required to be paid by such Used Vehicle Floorplan Lender pursuant to the foregoing provisions of this Section 2.12(c) by the time specified in Section 2.12(c)(i), the Used Vehicle Floorplan Swing Line Lender shall be entitled to recover from such Used Vehicle Floorplan Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Used Vehicle Floorplan Swing Line Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Used Vehicle Floorplan Swing Line Lender in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees charged by the Used Vehicle Floorplan Swing Line Lender in connection with the foregoing. If such Used Vehicle Floorplan Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Used Vehicle Floorplan Lender's Committed Loan included in the relevant Used Vehicle Floorplan Committed Borrower or funded participation in the relevant Used Vehicle Floorplan Swing Line Loan, as the case may be. A certificate of the Used Vehicle Floorplan Swing Line Lender submitted to any Used Vehicle Floorplan Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Used Vehicle Floorplan Lender's obligation to make Used Vehicle Floorplan Committed Loans or to purchase and fund risk participations in Used Vehicle Floorplan Swing Line Loans pursuant to this Section 2.12(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Used Vehicle Floorplan Lender may have against the Used Vehicle Floorplan Swing Line Lender, the Company or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Used Vehicle Floorplan Lender's obligation to make Used Vehicle Floorplan Committed Loans pursuant to this Section 2.12(c) is subject to the conditions set forth in Section 4.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the Company to repay Used Vehicle Floorplan Swing Line Loans, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any Used Vehicle Floorplan Lender has purchased and funded a risk participation in a Used Vehicle Floorplan Swing Line Loan, if the Used Vehicle Floorplan Swing Line Lender receives any payment on account of such Used Vehicle Floorplan Swing Line Loan, the Used Vehicle Floorplan Swing Line Lender will distribute to such Used Vehicle Floorplan Lender its Applicable Used Vehicle Floorplan Percentage of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Used Vehicle Floorplan Lender's risk participation was funded) in the same funds as those received by the Used Vehicle Floorplan Swing Line Lender.

(ii) If any payment received by the Used Vehicle Floorplan Swing Line Lender in respect of principal or interest on any Used Vehicle Floorplan Swing Line Loan is required to be returned by the Used Vehicle Floorplan Swing Line Lender under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the Used Vehicle Floorplan Swing Line Lender in its discretion), each Used Vehicle Floorplan Lender shall pay to

the Used Vehicle Floorplan Swing Line Lender its Applicable Used Vehicle Floorplan Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. The Administrative Agent will make such demand upon the request of the Used Vehicle Floorplan Swing Line Lender. The obligations of the Used Vehicle Floorplan Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Used Vehicle Floorplan Swing Line Lender. The Used Vehicle Floorplan Swing Line Lender shall be responsible for invoicing the Company for interest on the Used Vehicle Floorplan Swing Line Loans. Until each Used Vehicle Floorplan Lender funds its ~~Eurodollar Rate~~ Daily Simple SOFR Committed Loan or risk participation pursuant to this Section 2.12 to refinance such Used Vehicle Floorplan Lender's Applicable Used Vehicle Floorplan Percentage of any Used Vehicle Floorplan Swing Line Loan, interest in respect of such Applicable Used Vehicle Floorplan Percentage shall be solely for the account of the Used Vehicle Floorplan Swing Line Lender.

(f) Payments Directly to Used Vehicle Floorplan Swing Line Lender. The Company shall make all payments of principal and interest in respect of the Used Vehicle Floorplan Swing Line Loans directly to the Used Vehicle Floorplan Swing Line Lender.

### **2.13 Prepayments.**

(a) In addition to the required payments of principal of Revolving Loans, New Vehicle Floorplan Loans and Used Vehicle Floorplan Loans set forth in Section 2.15 and prepayments of New Vehicle Floorplan Loans (solely for the purposes of calculating interest on such Loans) made by payments by the New Vehicle Borrowers into the New Vehicle Floorplan Offset Account pursuant to Section 2.09, the Company may, pursuant to delivery by the Company to the Administrative Agent of a Notice of Loan Prepayment, at any time or from time to time voluntarily prepay Revolving Committed Loans, New Vehicle Floorplan Committed Loans or Used Vehicle Floorplan Committed Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Administrative Agent not later than 1:00 p.m. on the date of prepayment of such Loans; (ii) any prepayment of Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment, whether such prepayment is applicable to the Revolving Committed Loans, New Vehicle Floorplan Committed Loans or Used Vehicle Floorplan Committed Loans and the Type(s) of Loans to be prepaid. The Administrative Agent will promptly notify each applicable Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Revolving Percentage, Applicable New Vehicle Floorplan Percentage or Applicable Used Vehicle Floorplan Percentage, as applicable, of such prepayment. If such notice is given by the Company, the Company shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Subject to Section 2.27, each such prepayment of Revolving Committed Loans of the Revolving Lenders shall be applied in accordance with their respective Applicable Revolving Percentages; each such prepayment of New Vehicle Floorplan Committed Loans of the New Vehicle Floorplan Lenders shall be applied in accordance with their respective Applicable New Vehicle Floorplan Percentages; and each such prepayment of Used Vehicle Floorplan Committed Loans of the Used Vehicle Floorplan Lenders shall be applied in accordance with their respective Applicable Used Vehicle Floorplan Percentages.

(b) At any time during which a Revolving Autoborrow Agreement is not in effect, the Company may, pursuant to delivery by the Company to the Revolving Swing Line Lender of a Notice of Loan Prepayment (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Revolving Swing Line Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Revolving Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the date of the prepayment, and (ii) any such prepayment shall be in a minimum principal amount of \$100,000 (or, if less, the entire principal amount thereof outstanding). Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Company, the Company shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(c) The Company may, at any time or from time to time, voluntarily prepay New Vehicle Floorplan Swing Line Loans in whole or in part without premium or penalty, provided that the Company has entered the amount of such prepayment and other required information (including the make, model and vehicle identification number of each respective New Vehicle) in the Floorplan On-Line System not later than 7:00 p.m. on the date of the prepayment. The Company shall make such prepayment and the payment amount entered by the Company shall be due and payable on the date such information is timely entered in the Floorplan On-Line System.

(d) The Company may, pursuant to delivery by the Company to the Used Vehicle Floorplan Swing Line Lender of a Notice of Loan Prepayment (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Used Vehicle Floorplan Swing Line Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Used Vehicle Floorplan Swing Line Lender not later than 1:00 p.m. on the date of the prepayment and (ii) any such prepayment shall be in a minimum principal amount of \$100,000 (or, if less, the entire principal amount thereof outstanding). Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Company, the Company shall make such prepayment and the payment amount specified in such notice shall be due and payable on the dated specified therein.

(e) If for any reason the Total Revolving Outstandings at any time exceed the lesser of (1) the Revolving Borrowing Base or (2) the Aggregate Revolving Commitments then in effect, the Company shall immediately prepay Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; provided, however, that the Company shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.13(e) unless after the prepayment in full of the Revolving Loans the Total Revolving Outstandings exceed the lesser of (1) the Revolving Borrowing Base or (2) the Aggregate Revolving Commitments then in effect.

(f) If for any reason the Total New Vehicle Floorplan Outstandings at any time exceed the Aggregate New Vehicle Floorplan Commitments then in effect, the Borrowers (jointly and severally) shall immediately prepay New Vehicle Floorplan Loans in an aggregate amount sufficient to eliminate such excess.

(g) If for any reason the Total Used Vehicle Floorplan Outstandings at any time exceed the lesser of the Aggregate Used Vehicle Floorplan Commitments then in effect or the Used Vehicle Floorplan Borrowing Base then in effect, the Borrowers (jointly and severally) shall immediately prepay Used Vehicle Floorplan Loans in an aggregate amount sufficient to eliminate such excess.

(h) If for any reason the aggregate Outstanding Amount of Revolving Swing Line Loans exceeds the Revolving Swing Line Sublimit, the Company shall immediately prepay Revolving Swing Line Loans in an aggregate amount sufficient to eliminate such excess.

(i) If for any reason, the Outstanding Amount of New Vehicle Floorplan Loans exceeds any applicable Within Line Limitation (unless otherwise agreed to by the Administrative Agent), the Borrowers (jointly and severally) shall immediately prepay New Vehicle Floorplan Loans in an aggregate amount sufficient to eliminate such excess.

(j) If for any reason the aggregate Outstanding Amount of Used Vehicle Floorplan Swing Line Loans exceeds the Used Vehicle Floorplan Swing Line Sublimit, the Company shall immediately prepay Used Vehicle Floorplan Swing Line Loans in an aggregate amount sufficient to eliminate such excess.

~~(k) — Prepayments made in respect of any New Vehicle Floorplan Loan must specify the applicable New Vehicle Borrower and New Vehicle(s) (including the make, model and vehicle identification number of such New Vehicle(s)) attributable to such prepayment.~~

## 2.14 Termination, Reduction or Conversion of Commitments.

(a) The Company may, upon notice to the Administrative Agent, terminate the Aggregate Revolving Commitments, Aggregate New Vehicle Floorplan Commitments or the Aggregate Used Vehicle Floorplan Commitments, or from time to time permanently reduce the Aggregate Revolving Commitments, Aggregate New Vehicle Floorplan Commitments or the Aggregate Used Vehicle Floorplan Commitments; provided that (i) any such notice shall be received by the Administrative Agent not later than 1:00 p.m. fifteen (15) days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$10,000,000 or any whole multiple of \$1,000,000 in excess thereof, (iii) the Company shall not terminate or reduce the Aggregate Revolving Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Outstandings would exceed the lesser of the Aggregate Revolving Commitments or the Revolving Borrowing Base, (iv) the Company shall not terminate or reduce the Aggregate New Vehicle Floorplan Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total New Vehicle Floorplan Outstandings would exceed the Aggregate New Vehicle Floorplan Commitments, (v) the Company shall not terminate or reduce the Aggregate Used Vehicle Floorplan Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Used Vehicle Floorplan Outstandings would exceed the lesser of the Aggregate Used Vehicle Floorplan Commitments or the Used Vehicle Floorplan Borrowing Base, (vi) if, after giving effect to any reduction of the Aggregate Revolving Commitments, the Letter of Credit Sublimit or the Revolving Swing Line Sublimit exceeds the amount of the Aggregate Revolving Commitments, such Sublimit shall be automatically reduced by the amount of such excess, (vii) if, after giving effect to any reduction of the Aggregate New Vehicle Floorplan Commitments, the New Vehicle Floorplan Swing Line Sublimit exceeds the amount of the Aggregate New Vehicle Floorplan Commitments, such Sublimit shall be automatically reduced by the amount of such excess, (viii) if, after giving effect to any reduction of the Aggregate Used Vehicle Floorplan Commitments, the Used Vehicle Floorplan Swing Line Sublimit exceeds the amount of the Aggregate Used Vehicle Floorplan Commitments, such Sublimit shall be automatically reduced by the amount of such excess, and (ix) following any such reduction, no more than 20% of the Aggregate Floorplan Facility Commitments may be Aggregate Used Vehicle Floorplan Commitments. In connection with any reduction of the Aggregate New Vehicle Floorplan Commitments, the New Vehicle Floorplan Swing Line Lender in its discretion may suspend and/or terminate all or a portion of the then outstanding Payment Commitments or Payoff Letter Commitments which shall be promptly selected by the Company, in an amount that corresponds to the size of said reduction. The Administrative Agent will promptly notify the applicable Lenders of any such notice of termination or reduction of the Aggregate Commitments. Any reduction of the Aggregate Revolving Commitments, Aggregate New Vehicle Floorplan Commitments or Used Vehicle Floorplan Commitments shall be applied to the Commitment of each Lender in accordance with (x) its respective Applicable Revolving Percentage, (y) its respective Applicable New Vehicle Floorplan Percentage and (z) its respective Applicable Used Vehicle Floorplan Percentage, as the case may be. All fees accrued until the effective date of any termination of the Aggregate Commitments shall be paid on the effective date of such termination.

(b) At any time there exists any portion of the Aggregate Revolving Commitments in excess of the Total Revolving Outstandings (such excess amount being referred to as the "unused portion"), and provided that, unless otherwise approved by the Administrative Agent in its sole discretion, no Default shall have occurred and be continuing, the Company may, by delivering to the Administrative Agent and in the case of a conversion to New Vehicle Floorplan Commitments, the New Vehicle Floorplan Operations Group, a Conversion Notice in substantially the form of Exhibit P not less than five days prior to the date of such conversion, request the Administrative Agent and the Lenders to convert all or a part of such unused portion of the Aggregate Revolving Commitments into Aggregate New Vehicle Floorplan Commitments or Aggregate Used Vehicle Floorplan Commitments, provided, the Company shall not make such conversion if, after giving effect to all such conversions to occur at such time, (i) the Total Revolving Outstandings would exceed the lesser of (x) the Revolving Borrowing Base or (y) the Aggregate Revolving Commitments, (ii) the aggregate amount of Revolving Commitments converted to New Vehicle Floorplan Commitments or Used Vehicle Floorplan Commitments to occur at such time would exceed the lesser of (x) 20% of the Aggregate Commitments then in effect or (y) the Available Unused Revolving Commitments or (iii) the Aggregate Revolving Commitments would be less than \$50,000,000, provided further, following any such conversion, (i) the percentage of each Lender's Commitment allocated to the Revolving Credit Facility shall be equal to the percentage of each other

Lender's Commitment allocated to the Revolving Credit Facility, (ii) the percentage of each Lender's Commitment allocated to the New Vehicle Floorplan Facility shall be equal to the percentage of each other Lender's Commitment allocated to the New Vehicle Floorplan Facility, (iii) the percentage of each Lender's Commitment allocated to the Used Vehicle Floorplan Facility shall be equal to the percentage of each other Lender's Commitment allocated to the Used Vehicle Floorplan Facility, (iv) no more than 20% of the Aggregate Floorplan Facility Commitments may be allocated to the Aggregate Used Vehicle Floorplan Commitments and (v) the commitment fee owing and accruing with respect to any Revolving Commitments converted into New Vehicle Floorplan Commitments or Used Vehicle Floorplan Commitments under this Section 2.14(b) shall be calculated at the Applicable Rate for commitment fees for New Vehicle Floorplan Commitments or Used Vehicle Floorplan Commitments, as the case may be. Following such notice from the Company to the Administrative Agent and, if applicable, the New Vehicle Floorplan Operations Group, and subject to the foregoing, the Aggregate New Vehicle Floorplan Commitments or Used Vehicle Floorplan Commitments, as the case may be, shall upon such request be increased by the amount so requested by the Company, provided further that, the Aggregate Commitments after giving effect to such conversion shall not exceed the Aggregate Commitments in effect prior to giving effect to such conversion.

(c) At any time there exists any portion of (x) the New Vehicle Floorplan Commitments in excess of the Total New Vehicle Floorplan Outstandings or (y) the Used Vehicle Floorplan Commitments in excess of the Total Used Vehicle Floorplan Outstandings (such excess amount in either of clause (x) or (y) being referred to as the "unused portion"), and provided that, unless otherwise approved by the Administrative Agent in its sole discretion, no Default shall have occurred and be continuing, the Company may, by delivering to the Administrative Agent a Conversion Notice in substantially the form of Exhibit P not less than five days prior to the date of such conversion, request the Administrative Agent and the Lenders to convert all or a part of such unused portion of the New Vehicle Floorplan Commitments or Used Vehicle Floorplan Commitments into Aggregate Revolving Commitments, provided, the Company shall not make such conversion if, after giving effect thereto, (i) the Total New Vehicle Floorplan Outstandings would exceed the Aggregate New Vehicle Floorplan Commitments, (ii) the Used Vehicle Floorplan Outstandings would exceed the lesser of (x) the Used Vehicle Floorplan Borrowing Base or (y) the Aggregate Used Vehicle Floorplan Commitments or (iii) Revolving Commitments would exceed 20% of the Aggregate Commitments then in effect, provided further, following any such conversion, (i) the percentage of each Lender's Commitment allocated to the Revolving Credit Facility shall be equal to the percentage of each other Lender's Commitment allocated to the Revolving Credit Facility, (ii) the percentage of each Lender's Commitment allocated to the New Vehicle Floorplan Facility shall be equal to the percentage of each other Lender's Commitment allocated to the New Vehicle Floorplan Facility, (iii) the percentage of each Lender's Commitment allocated to the Used Vehicle Floorplan Facility shall be equal to the percentage of each other Lender's Commitment allocated to the Used Vehicle Floorplan Facility, (iv) no more than 20% of the Aggregate Floorplan Facility Commitments may be allocated to the Aggregate Used Vehicle Floorplan Commitments and (v) the commitment fee owing and accruing with respect to any New Vehicle Floorplan Commitments or Used Vehicle Floorplan Commitments converted into Revolving Commitments under this Section 2.14(c) shall be calculated at the Applicable Rate for commitment fees for Revolving Commitments. Following such notice from the Company to the Administrative Agent and subject to the foregoing, the Aggregate Revolving Commitments shall upon such request be increased by the amount so requested by the Company, provided further that, the Aggregate Commitments after giving effect to such conversion shall not exceed the Aggregate Commitments in effect prior to giving effect to such conversion.

(d) In connection with the conversions and re-conversions described in clauses (b) and (c) above, the requisite assignments of outstanding Loans shall be made in such amounts by and between the Lenders, and as directed by the Administrative Agent, to the extent necessary to keep the outstanding Revolving Committed Loans, New Vehicle Floorplan Committed Loans, or Used Vehicle Floorplan Committed Loans, as applicable, ratable with any revised Applicable Percentages with respect to the applicable Committed Loans arising from any such conversion or re-conversion with the same force and effect as if such assignments were evidenced by applicable Assignments and Assumptions but without the payment of any related assignment fee, and no other documents or instruments shall be, or shall be required to be, executed in connection with such assignments (all of which requirements are hereby waived).

## 2.15 Repayment of Loans.

### (a) Repayment of Revolving Loans.

(i) The Company shall repay to the Revolving Lenders on the Maturity Date the aggregate principal amount of Revolving Committed Loans outstanding on such date.

(ii) At any time the Revolving Autoborrow Agreement is in effect with respect to the Revolving Swing Line Loans, the Revolving Swing Line Loans shall be repaid (A) in accordance with the terms of such Revolving Autoborrow Agreement and (B) in any event, on the Maturity Date. At any time the Revolving Autoborrow Agreement is not in effect with respect to the Revolving Swing Line Loans, the Company shall repay each Revolving Swing Line Loan (X) at any time on demand by the Revolving Swing Line Lender and (Y) on the Maturity Date.

### (b) Repayment of New Vehicle Floorplan Loans.

(i) The New Vehicle Borrowers (jointly and severally) shall repay the New Vehicle Floorplan Committed Loans on the Maturity Date.

(ii) The New Vehicle Borrowers (jointly and severally) shall repay each New Vehicle Floorplan Swing Line Loan (A) at any time on demand by the New Vehicle Floorplan Swing Line Lender, provided that if the conditions to making a New Vehicle Floorplan Committed Loan are then satisfied, and if such demand is made at any time other than during an Asbury New Vehicle Control Period, the New Vehicle Floorplan Lender shall request a New Vehicle Floorplan Committed Borrowing to refinance such New Vehicle Floorplan Swing Line Loan in full (or, if less, to the maximum extent then available under the New Vehicle Floorplan Committed Facility) prior to making a demand on the New Vehicle Borrowers, and (B) on the Maturity Date.

(iii) The New Vehicle Borrowers (jointly and severally) shall pay in full an amount equal to the New Vehicle Non-Offset Floorplan Loan made with respect to any Floored New Vehicle (including any Demonstrator, Rental Vehicle, and other mileage New Vehicle) that has been sold or leased (other than the ordinary course lease of a Rental Vehicle) by any New Vehicle Borrower: (A) (1) with respect to New Vehicles other than those described in (2) below, the earliest to occur of (x) fifteen (15) days after such sale or lease thereof or (y) with respect any New Vehicle for which cash has been received upon such sale or lease thereof, within five (5) days of the receipt of such cash, and (2) with respect to Fleet Vehicles, upon the earliest to occur of (aa) thirty (30) days after the date of such sale or lease (other than the ordinary course lease of a Rental Vehicle) and (bb) two (2) Business Days following receipt of proceeds from such sale or lease thereof. With respect to each Floored New Vehicle that has not been sold or leased, the New Vehicle Borrowers (jointly and severally) shall pay in full an amount equal to (i) in the case of any such New Vehicle held as Inventory, beginning 12 months after the date such New Vehicle is Deemed Floored, in monthly payments of 10% of the original amount of the New Vehicle Non-Offset Floorplan Loan relating to such New Vehicle for month 12, and 5% of the original amount of the New Vehicle Non-Offset Floorplan Loan relating to such New Vehicle for each of months 13 and 14, with the final payment ~~for all amounts then outstanding under in an amount equal to the remainder of the original amount of~~ such New Vehicle Non-Offset Floorplan Loan (after giving effect to the foregoing curtailment payments described in this clause (i)) due 15 months after the date such New Vehicle is Deemed Floored, and (ii) in the case of each Demonstrator, Rental Vehicle, and other mileage Floored New Vehicle, beginning with the first Automatic Debit Date occurring after the date such New Vehicle is Deemed To Be A Mileage Vehicle, monthly payments of 2% of the original amount of the New Vehicle Non-Offset Floorplan Loan relating to such New Vehicle, with the final payment ~~for all amounts then outstanding under in an amount equal to the remainder of the original amount of~~ such New Vehicle Non-Offset Floorplan Loan (after giving effect to the foregoing curtailment payments described in this clause (ii)) due 24 months after the date such New Vehicle is Deemed Floored. Upon the funding thereof, any New Vehicle Floorplan Overdraft shall be due and payable in full by the New Vehicle Borrowers on the next following Business Day. The Borrowers agree and

acknowledge that no New Vehicle Floorplan Offset Account Advance or Floorplan Offset Amount (or distribution thereof by the Administrative Agent pursuant to Section 2.09(b)(ii)) shall limit the payment requirements set forth in this Section 2.15(b)(iii).

(iv) Payments required to be made by any New Vehicle Borrower as set forth in Section 2.15(b)(i) and (ii) shall be applied in the following order: (1) first, to the outstanding principal balance and then to accrued interest on any New Vehicle Floorplan Overdraft, (2) second, to the outstanding principal balance of New Vehicle Floorplan Swing Line Loans, and (3) finally, to the remaining outstanding principal balance of the New Vehicle Floor Plan Committed Loans. Payments required to be made by any New Vehicle Borrower as set forth in Section 2.15(b)(iii) shall be applied first to the outstanding principal balance and then to accrued interest on the New Vehicle Floorplan Loan with respect to the applicable New Vehicle, and then in the order set forth in the sentence above.

(v) In the event of any disputed or duplicate New Vehicle Floorplan Loan (each a “Disputed Existing Loan”) being refinanced or paid down by any New Vehicle Floorplan Committed Loan or New Vehicle Floorplan Swing Line Loan in reliance on information provided by the Company, any Subsidiary or any existing lender pursuant to any audit, the Borrowers will (jointly and severally) upon demand, repay any New Vehicle Floorplan Committed Loan or New Vehicle Floorplan Swing Line Loan related to such Disputed Existing Loan, including accrued interest with respect to such New Vehicle Floorplan Committed Loan or New Vehicle Floorplan Swing Line Loan, regardless of whether such Disputed Existing Loan has been resolved with the prior lender.

(vi) Without limiting any other rights or obligations hereunder, interest, curtailment and other payments then due pursuant to this Section 2.15(b) or Section 2.17(b) shall be automatically debited on the Automatic Debit Date of each month from a deposit account maintained by the applicable New Vehicle Borrower with Bank of America (or from any other account designated by the Company) pursuant to the Floorplan On-line System (provided that if such account is not held with Bank of America, the payments described in this clause (vi) shall be debited one Business Day prior to the Automatic Debit Date, and provided further that if there are not sufficient funds in such account to pay such amounts, then the applicable New Vehicle Borrower shall pay such amounts in cash when due).

(vii) Payments made in respect of any New Vehicle Floorplan Loan must be made through the Floorplan On-Line System and shall not be effective unless (A) the Company has entered the amount of such payment and other required information (including the make, model and vehicle identification number of each respective New Vehicle) in the Floorplan On-Line System not later than 7:00 p.m. on the date of the payment, or (B) all New Vehicle Floorplan Loans are being simultaneously paid in full.

(viii) So long as the New Vehicle Swing Line Lender is also the Administrative Agent, all payments of principal on New Vehicle Floorplan Committed Loans shall be delivered to the New Vehicle Floorplan Swing Line Lender. Once the New Vehicle Floorplan Swing Line Lender has analyzed the outstanding principal amount of the applicable Loans and confirmed the VIN numbers of the related Vehicles, the New Vehicle Floorplan Swing Line Lender will turn such payment over to the Administrative Agent for application to the New Vehicle Floorplan Committed Loans. Any payment of New Vehicle Floorplan Loans must specify the VIN number of the applicable Vehicle unless all New Vehicle Floorplan Loans are being simultaneously paid in full.

(c) Repayment of Used Vehicle Floorplan Loans.

(i) The Used Vehicle Borrowers (jointly and severally) shall repay each Used Vehicle Floorplan Committed Loan on the Maturity Date.

(ii) At any time the Used Vehicle Autoborrow Agreement is in effect with respect to the Used Vehicle Swing Line Loans, the Used Vehicle Swing Line Loans shall be repaid (A) in accordance with the terms of such Used Vehicle Autoborrow Agreement and (B) in any event, on the Maturity Date. At any time the Used Vehicle Autoborrow Agreement is not in effect with respect to the Used Vehicle Swing Line Loans, the Used Vehicle Borrowers (jointly and severally) shall repay each Used Vehicle Floorplan Swing Line Loan on the Maturity Date or promptly following any demand by the Used Vehicle Floorplan Swing Line Lender.

## 2.16 Interest.

(a) Subject to the provisions of subsections (b), (c) and (d) below, (i) each ~~Eurodollar Rate~~ Daily Simple SOFR Committed Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to ~~the Eurodollar Rate~~ Daily Simple SOFR plus the Applicable Rate; (ii) each Base Rate Committed Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate; and (iii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to ~~the Eurodollar Rate~~ Daily Simple SOFR plus the Applicable Rate or the Base Rate plus the Applicable Rate, as applicable.

(b) Application of Floorplan Principal Reduction to New Vehicle Floorplan Loans. Subject to the terms and conditions of Section 2.09(b), the interest payable for any day with respect to the New Vehicle Floorplan Loans reduced by Section 2.09(b) will be reduced in an aggregate amount equal to (A) the Applicable Floorplan Principal Reduction for such day multiplied by (B) the per annum interest rate otherwise applicable to such New Vehicle Floorplan Loans for such day.

(c)

(i) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any amount (other than principal of any Loan) payable by any Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Upon the request of the Required Lenders, while any Event of Default exists (other than as set forth in clauses (b)(i) and (b)(ii) above), the applicable Borrowers shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(d) ~~(e)~~ Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

~~(d) Subject to provisos (i) and (ii) in the last paragraph of Section 2.04(b), Bank of America may enter into a New Vehicle Floorplan Offset Agreement with the Company, any New Vehicle Borrowers or any other Subsidiary from time to time, and while such an agreement is in effect and any Floorplan Offset Amount is credited to the respective New Vehicle Floorplan Offset Account, New Vehicle Floorplan Committed Loans in an aggregate outstanding principal amount equal to the Floorplan Offset Amount will not bear interest hereunder; provided further, however, that the Floorplan Offset~~



~~Amount shall not exceed 20% of the aggregate Outstanding Amount of all New Vehicle Floorplan Loans at any time.~~

## 2.17 Fees

. In addition to certain fees described in subsections (h) and (i) of Section 2.03:

(a) Commitment Fees. The Company shall pay to the Administrative Agent for the account of each Revolving Lender in accordance with its Applicable Revolving Percentage, a commitment fee equal to the Applicable Rate times the actual daily amount by which the Aggregate Revolving Commitments exceed the sum of (i) the Outstanding Amount of Revolving Committed Loans and (ii) the Outstanding Amount of L/C Obligations, subject to adjustment as provided in Section 2.27. The Borrowers (jointly and severally) shall pay to the Administrative Agent for the account of each New Vehicle Floorplan Lender in accordance with its Applicable New Vehicle Floorplan Percentage, a commitment fee equal to the Applicable Rate times the actual daily amount by which the Aggregate New Vehicle Floorplan Commitments exceed ~~the difference between (A) the Outstanding Amount of New Vehicle Floorplan Committed Loans, minus (B) the~~ as calculated after giving effect to any Floorplan Offset Amount in accordance with Section 2.09), subject to adjustment as provided in Section 2.27. The Borrowers (jointly and severally) shall pay to the Administrative Agent for the account of each Used Vehicle Floorplan Lender in accordance with its Applicable Used Vehicle Floorplan Percentage, a commitment fee equal to the Applicable Rate times the actual daily amount by which the Aggregate Used Vehicle Floorplan Commitments exceed the Outstanding Amount of Used Vehicle Floorplan Committed Loans, subject to adjustment as provided in Section 2.27. The commitment fees shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the next succeeding Automatic Debit Date after the end of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the Maturity Date. The commitment fees shall be calculated quarterly in arrears, and if there is any change in the respective Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by such Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. For purposes of clarity, Revolving Swing Line Loans, New Vehicle Floorplan Swing Line Loans, Used Vehicle Floorplan Swing Line Loans and amounts in any New Vehicle Floorplan Offset Account shall not be included in calculating the Outstanding Amount of Revolving Committed Loans, New Vehicle Floorplan Committed Loans or Used Vehicle Floorplan Committed Loans used in determining the commitment fees set forth above.

## (b) Other Fees.

(i) The Company shall pay to the Arranger and the Administrative Agent for their own respective accounts fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(ii) The Company shall pay to the Lenders such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

## 2.18 Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate.

(a) All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to ~~the Eurodollar Rate~~ Daily Simple SOFR) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.20(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) If, as a result of any restatement of or other adjustment to the financial statements of the Company or for any other reason, the Company or the Lenders determine that (i) the Consolidated Total Lease Adjusted Leverage Ratio as calculated by the Company as of any applicable date was inaccurate and (ii) a proper calculation of the Consolidated Total Lease Adjusted Leverage Ratio would have resulted in higher pricing for such period, the Company shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders or the applicable L/C Issuer, as the case may be, promptly on demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Company under the Bankruptcy Code of the United States, automatically and without further action by the Administrative Agent, any Lender or any L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of the Administrative Agent, any Lender or any L/C Issuer, as the case may be, under Section 2.03(e)(iii), 2.03(h) or 2.17(b) or under Article VIII. The Company's obligations under this paragraph shall survive the termination of the Aggregate Commitments and the repayment of all other Obligations hereunder.

## **2.19 Evidence of Debt.**

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the respective Borrowers under each Facility shall execute and deliver to such Lender (through the Administrative Agent) (i) a Revolving Note, which shall evidence such Lender's Revolving Loans, (ii) a New Vehicle Floorplan Note, which shall evidence such Lender's New Vehicle Floorplan Loans, and (iii) a Used Vehicle Floorplan Note, which shall evidence such Lender's Used Vehicle Floorplan Loans, in each case in addition to such accounts or records. Each Lender may attach schedules to its Notes and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in subsection (a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit, Revolving Swing Line Loans, New Vehicle Floorplan Swing Line Loans and Used Vehicle Floorplan Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

## **2.20 Payments Generally; Administrative Agent's Clawback.**

(a) General. All payments to be made by any Borrower shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by any Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Revolving Percentage, Applicable New Vehicle Floorplan Percentage or Applicable Used Vehicle Floorplan Percentage, as applicable (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. All payments to be made by any Borrower hereunder to the New Vehicle Floorplan Swing Line Lender shall be made as follows: upon a New Vehicle Borrower entering information into the Floorplan On-Line System authorizing the New Vehicle

Floorplan Swing Line Lender to debit any amount from such Borrower's deposit account, such amount will be deemed received by the New Vehicle Floorplan Swing Line Lender at the following times depending on whether the deposit account is maintained at Bank of America and when the request is entered pursuant to the Floorplan On-Line System:

(i) if the deposit account is maintained at Bank of America, the amount will be deemed received (A) on the same Business Day if the request is entered prior to 7:00 p.m. on that day, or (B) on the next Business Day if the request is entered at or after 7:00 p.m. or is entered on a day that is not a Business Day; and

(ii) if the deposit account is maintained at any Person other than Bank of America, the amount will be deemed received (A) on the following Business Day if the request is received prior to 7:00 p.m. on a Business Day, or (B) two Business Days later if the request is entered at or after 7:00 p.m. or is entered on a day that is not a Business Day.

If any payment to be made by any Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b)

(i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to 12:00 noon on the date of any Committed Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Committed Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02, Section 2.06 or Section 2.11 and may, in reliance upon such assumption, make available to the Company or applicable Vehicle Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Committed Borrowing available to the Administrative Agent, then the applicable Lender, the Company and the other Borrowers severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Company or applicable Vehicle Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Company or any other Borrower, the interest rate applicable to Base Rate Loans. If the Company or any other Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Company or applicable Vehicle Borrower the amount of such interest paid by the Company or such Borrower for such period. If such Lender pays its share of the applicable Committed Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Committed Borrowing. Any payment by the Company or any other Borrower shall be without prejudice to any claim the Company or any other Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrowers; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Company (on its own behalf or on behalf of another Borrower) prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or any L/C Issuer hereunder that such Borrower will not make such payment, the Administrative Agent may assume that such Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or such L/C Issuer, as the case may be, the amount due.

With respect to any payment that the Administrative Agent makes for the account of the Lenders or any L/C Issuer hereunder as to which the Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such

payment referred to as the “Rescindable Amount”): (1) the ~~Borrower has~~Borrowers have not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by the ~~Borrower~~Borrowers (whether or not then owed); or (3) the Administrative agent has for any reason otherwise erroneously made such payment: then each of the Lenders or the applicable L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Lender or such L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or any Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender to any Borrower as provided in the foregoing provisions of this Article II, and such funds are not made available to such Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Revolving Lenders Several. The obligations of the Lenders in each Facility hereunder to make Committed Loans with respect to such Facility, to fund participations in the applicable Swing Line Loans under such Facility and, if applicable, Letters of Credit and to make payments pursuant to Section 10.04(c) are several and not joint within each such Facility. The failure of any Lender to make any Committed Loan, to fund any such participation or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Committed Loan, to purchase its participation or to make its payment under Section 10.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(f) Insufficient Funds. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, L/C Borrowings, interest and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, toward payment of principal and L/C Borrowings then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and L/C Borrowings then due to such parties.

## 2.21 Sharing of Payments by Lenders

. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Revolving Committed Loans, New Vehicle Floorplan Committed Loans, or Used Vehicle Floorplan Committed Loans made by it, or the participations in L/C Obligations, Revolving Swing Line Loans, New Vehicle Floorplan Swing Line Loans or Used Vehicle Floorplan Swing Line Loans held by it resulting in such Lender’s receiving payment of a proportion of the aggregate amount of such Revolving Committed Loans, New Vehicle Floorplan Committed Loans, or Used Vehicle Floorplan Committed Loans or participations and accrued interest thereon greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase from the other applicable Lenders (in the respective Revolving Facility, New Vehicle Floorplan Facility or Used Vehicle Floorplan Facility) (for cash at face value) participations in the applicable Revolving Committed Loans, New Vehicle Floorplan Committed Loans, or Used Vehicle Floorplan Committed Loans and subparticipations in L/C Obligations, Revolving Swing Line Loans, New Vehicle Floorplan Swing Line Loans or Used Vehicle Floorplan Swing Line Loans of the other Lenders, or make such other adjustments

as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Committed Loans and other amounts owing them, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by or on behalf of any Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender, or payments made under this Agreement to a Non-Extending Lender on its Maturity Date) (y) the application of Cash Collateral provided for in Section 2.26, or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Revolving Committed Loans, New Vehicle Floorplan Committed Loans or Used Vehicle Floorplan Committed Loans or subparticipations in L/C Obligations, Revolving Swing Line Loans, New Vehicle Floorplan Swing Line Loans or Used Vehicle Floorplan Swing Line Loans, as the case may be, to any assignee or participant, other than an assignment to the Company or any Subsidiary thereof (as to which the provisions of this Section shall apply).

Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower in the amount of such participation.

## **2.22 Increase in Commitments.**

(a) Request for Increase. Provided there exists no Default, upon notice to the Administrative Agent (which shall promptly notify the applicable Lenders), the Company may from time to time after the Closing Date, request a simultaneous increase in the Aggregate Revolving Commitments, the Aggregate New Vehicle Floorplan Facility Commitments and the Aggregate Used Vehicle Floorplan Commitments by an aggregate amount (for all such requests) not exceeding the amount equal to the sum of (A) the amount that would make the Consolidated Secured Leverage Ratio equal to 2.00 to 1.00 (assuming that any increase in the Revolving Commitments is fully drawn) plus (B) \$350,000,000; provided that (i) any such request for an increase shall be in a minimum amount of \$25,000,000, (ii) the Company may make a maximum of two such requests in any fiscal year, (iii) any increase in a Lender's Commitments will be allocated pro rata to the Revolving Credit Facility, the New Vehicle Floorplan Facility and the Used Vehicle Floorplan Facility, (iv) the Revolving Credit Facility, the New Vehicle Floorplan Facility and the Used Vehicle Floorplan Facility shall be increased by a pro rata amount which results in approximately the same ratio of commitments existing between the Revolving Credit Facility and the Floorplan Facilities as of the Closing Date, (v) after giving effect to such increase, no more than 20% of the Aggregate Floorplan Facility Commitments may be allocated to the Aggregate Used Vehicle Floorplan Commitments and (vi) Revolving Commitments shall not exceed 20% of the Aggregate Commitments then in effect. At the time of sending such notice, the Company (in consultation with the Administrative Agent) shall specify the time period within which each Lender is requested to respond (which shall in no event be less than ten Business Days from the date of delivery of such notice to the Lenders).

(b) Lender Elections to Increase. Each Lender shall notify the Administrative Agent within such time period whether or not it agrees to increase its Revolving Commitment and Floorplan Commitment and, if so, by what amount. Any Lender not responding within such time period shall be deemed to have declined to increase its Commitment.

(c) Notification by Administrative Agent; Additional Lenders. The Administrative Agent shall notify the Company and each Lender of the Lenders' responses to each request made hereunder. To achieve the full amount of a requested increase and subject to the approval of the Administrative Agent, the L/C Issuers and the Swing Line Lenders (which approvals shall not be unreasonably withheld or

delayed), the Company may also invite additional Eligible Assignees to become Lenders pursuant to a joinder agreement in form and substance satisfactory to the Administrative Agent and its counsel.

(d) Effective Date and Allocations. If the Aggregate Commitments are increased in accordance with this Section, the Administrative Agent and the Company shall determine the effective date (the “Increase Effective Date”) and the final allocation of such increase. The Administrative Agent shall promptly notify the Company and the Lenders of the final allocation of such increase and the Increase Effective Date.

(e) Conditions to Effectiveness of Increase. As a condition precedent to such increase, the Company shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Increase Effective Date signed by a Responsible Officer of the Company (x) certifying that such increase has been duly authorized and approved by all necessary corporate or other organizational action of the Loan Parties (and, if not previously delivered, attaching a copy of the relevant corporate or other organizational action of such Loan Parties), and (y) certifying that, before and after giving effect to such increase, (A) the representations and warranties contained in Article V and the other Loan Documents are true and correct in all material respects on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects as of such earlier date, and except that for purposes of this Section 2.22, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01, and (B) no Default exists; provided, that, with respect to any Increase in Commitments the proceeds of which are intended to be and are actually used to finance one or more Permitted Acquisitions which are subject to customary “certain funds provisions”, such certifications and representations (and the conditions to making the Loans to finance such Permitted Acquisition(s)) may be modified to reflect customary “certain funds provisions” as agreed to by the Administrative Agent and the Company.

(f) Conflicting Provisions. This Section shall supersede any provisions in Section 2.21 or 10.01 to the contrary.

## **2.23 Extension of Maturity Date.**

(a) Requests for Extension. The ~~Borrower~~Company may, no more than one time per Loan Year, by notice to the Administrative Agent (who shall promptly notify the Lenders) not earlier than 60 days and not later than 35 days prior to the Anniversary Date in such Loan Year, request that each Lender extend such Lender’s Maturity Date for an additional 364 days from the Existing Maturity Date.

(b) Lender Elections to Extend. Each Lender, acting in its sole and individual discretion, shall, by notice to the Administrative Agent given not later than the date (the “Notice Date”) that is 20 days prior to the Anniversary Date in such Loan Year, advise the Administrative Agent whether or not such Lender agrees to such extension (and each Lender that determines not to so extend its Maturity Date (a “Non-Extending Lender”) shall notify the Administrative Agent of such fact promptly after such determination (but in any event no later than the Notice Date) and any Lender that does not so advise the Administrative Agent on or before the Notice Date shall be deemed to be a Non-Extending Lender. The election of any Lender to agree to such extension shall not obligate any other Lender to so agree.

(c) Notification by Administrative Agent. The Administrative Agent shall notify the ~~Borrower~~Company of each Lender’s determination under this Section no later than the date 15 days prior to the Anniversary Date in such Loan Year (or, if such date is not a Business Day, on the next preceding Business Day).

(d) Additional Commitment Lenders. The ~~Borrower~~Borrowers shall have the right to replace each Non-Extending Lender with, and add as “Lenders” under this Agreement in place thereof, one or more Eligible Assignees (each, an “Additional Commitment Lender”) as provided in Section 10.13; provided that each of such Additional Commitment Lenders shall enter into an Assignment and Assumption pursuant to which such Additional Commitment Lender shall, effective as of the Anniversary Date in such Loan Year, undertake a Commitment (and, if any such Additional Commitment Lender is

already a Lender, its Commitment shall be in addition to such Lender's Commitment hereunder on such date).

(e) Minimum Extension Requirement. If (and only if) the total of the Commitments of the Lenders that have agreed so to extend their Maturity Date (each, an "Extending Lender") and the additional Commitments of the Additional Commitment Lenders shall be more than 80% of the aggregate amount of the Commitments in effect immediately prior to the Anniversary Date in such Loan Year, then, effective as of the Anniversary Date in such Loan Year, the Maturity Date of each Extending Lender and of each Additional Commitment Lender shall be extended to the date falling one year after the Existing Maturity Date (except that, if such date is not a Business Day, such Maturity Date as so extended shall be the next preceding Business Day) and each Additional Commitment Lender shall thereupon become a "Lender" for all purposes of this Agreement.

(f) Conditions to Effectiveness of Extensions. As a condition precedent to such extension, the Borrower Company shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Anniversary Date in such Loan Year (in sufficient copies for each Extending Lender and each Additional Commitment Lender) signed by a Responsible Officer of such Loan Party (i) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such extension and (ii) in the case of the Borrower, certifying that, before and after giving effect to such extension, (A) the representations and warranties contained in Article V and the other Loan Documents are true and correct on and as of the Anniversary Date in such Loan Year, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Section 2.14, the representations and warranties contained in clauses (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01, and (B) no Default exists or would result therefrom. In addition, on the Maturity Date of each Non-Extending Lender, the Borrower Borrowers shall prepay any Committed Loans outstanding on such date (and pay any additional amounts required pursuant to Section 3.05) to the extent necessary to keep outstanding Committed Loans ratable with any revised Applicable Percentages of the respective Lenders effective as of such date.

(g) Amendment; Sharing of Payments. In connection with any extension of the Maturity Date, the Borrower, the Administrative Agent and each extending Lender may make such amendments to this Agreement as the Administrative Agent determines to be reasonably necessary to evidence the extension. This Section 2.23 shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

## **2.24 New Vehicle Borrowers.**

(a) Effective as of the date hereof, each Subsidiary that has executed this Agreement as a New Vehicle Borrower shall be a "New Vehicle Borrower" hereunder and may receive New Vehicle Floorplan Loans for its account on the terms and conditions set forth in this Agreement; provided, that (i) any Subsidiary that owns or operates a Ford or Lincoln dealership or (ii) any Subsidiary that is a Foreign Subsidiary shall not be required to become a New Vehicle Borrower.

(b) If, at any time, any Subsidiary engages in the sale or leasing of Vehicles, the Company shall (or, in the case of (i) any Subsidiary which owns or operates solely a Ford or Lincoln dealership or (ii) any Subsidiary that is a Foreign Subsidiary, may) designate such Subsidiary as a New Vehicle Borrower and shall deliver to the Administrative Agent, pursuant to Section 6.14 or otherwise, a Joinder Agreement executed by such Subsidiary identifying such Subsidiary as a New Vehicle Borrower; provided that a New Vehicle Borrower shall not be required to execute a Joinder Agreement if such New Vehicle Borrower has executed and delivered this Agreement on the Closing Date. The parties hereto acknowledge and agree that prior to any such Subsidiary becoming entitled to utilize the New Vehicle Floorplan Facility the Administrative Agent, the New Vehicle Floorplan Swing Line Lender, and the other Lenders shall have received the documents required by Section 6.14. Upon satisfaction of the foregoing requirements, each of the New Vehicle Floorplan Lenders agrees to permit such New Vehicle Borrower to receive New Vehicle Floorplan Loans, hereunder, on the terms and conditions set forth herein, and each of the parties agrees that such New Vehicle Borrower otherwise shall be a Borrower for all purposes of this Agreement.

(c) Notwithstanding any other provision of this Agreement, each New Vehicle Borrower shall be jointly and severally liable as a primary obligor, and not merely as surety, for any and all Obligations under the New Vehicle Floorplan Facility now or hereafter owed to the Administrative Agent, the New Vehicle Floorplan Swing Line Lender and the New Vehicle Floorplan Lenders or related fees, in each case, whether voluntary or involuntary and however arising, whether direct or acquired by any Lender by assignment or succession, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined (such Obligations, the “New Vehicle Floorplan Facility Liabilities”).

(d) With respect to the New Vehicle Borrowers’ joint and several liability as provided hereunder, each New Vehicle Borrower expressly waives any and all defenses now or hereafter arising or asserted by reason of (i) any lack of legality, validity or enforceability of this Agreement, of any of the Notes, of any other Loan Document, or of any other agreement or instrument creating, providing security for, or otherwise relating to any of the Obligations or any guaranty of any of the New Vehicle Floorplan Facility Liabilities (the Loan Documents and all such other agreements and instruments being collectively referred to as the “Related Agreements”); (ii) any action taken under any of the Related Agreements, any exercise of any right or power therein conferred, any failure or omission to enforce any right conferred thereby, or any waiver of any covenant or condition therein provided; (iii) any acceleration of the maturity of any of the New Vehicle Floorplan Facility Liabilities or of any other obligations or liabilities of any Person under any of the Related Agreements; (iv) any release, exchange, non-perfection, lapse in perfection, disposal, deterioration in value, or impairment of any security for any of the New Vehicle Floorplan Facility Liabilities, or for any other obligations or liabilities of any Person under any of the Related Agreements; (v) any dissolution of any Borrower, any Loan Party or any other party to a Related Agreement, or the combination or consolidation of any Borrower, any Loan Party or any other party to a Related Agreement into or with another entity or any transfer or disposition of any assets of any Borrower, any Loan Party or any other party to a Related Agreement; (vi) any extension (including without limitation extensions of time for payment), renewal, amendment, restructuring or restatement of, any acceptance of late or partial payments under, or any change in the amount of any borrowings or any credit facilities available under, this Agreement, any of the Notes or any other Loan Document or any other Related Agreement, in whole or in part; (vii) the existence, addition, modification, termination, reduction or impairment of value, or release of any other guaranty (or security therefor) of the New Vehicle Floorplan Facility Liabilities; (viii) any waiver of, forbearance or indulgence under, or other consent to any change in or departure from any term or provision contained in this Agreement, any other Loan Document or any other Related Agreement, including without limitation any term pertaining to the payment or performance of any of the New Vehicle Floorplan Facility Liabilities, or any of the obligations or liabilities of any party to any other Related Agreement; and (ix) any other circumstance whatsoever (with or without notice to or knowledge of such New Vehicle Borrower) which may or might in any manner or to any extent vary the risks of such New Vehicle Borrower, or might otherwise constitute a legal or equitable defense available to, or discharge of, a surety or a guarantor, including without limitation any right to require or claim that resort be had to any Borrower or any other Loan Party or to any collateral in respect of the New Vehicle Floorplan Facility Liabilities. It is the express purpose and intent of the parties hereto that the joint and several liability of each New Vehicle Borrower for the New Vehicle Floorplan Facility Liabilities shall be absolute and unconditional under any and all circumstances and shall not be discharged except by payment as herein provided. Notwithstanding the foregoing, the liability of each New Vehicle Borrower with respect to its New Vehicle Floorplan Facility Liabilities shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code of the United States or any comparable provisions of any applicable state law.

(e) Each Subsidiary that is or becomes a “New Vehicle Borrower” pursuant to this Section 2.24 hereby irrevocably appoints the Company as its agent for all purposes relevant to this Agreement and each of the other Loan Documents, including (i) the giving and receipt of notices, (ii) the execution and delivery of all documents, instruments and certificates contemplated herein and all modifications hereto, and (iii) the receipt of the proceeds of any New Vehicle Floorplan Loans made by the Lenders to any such New Vehicle Borrower hereunder. Any acknowledgment, consent, direction, certification or other action which might otherwise be valid or effective only if given or taken by all Borrowers, or by any Borrower acting singly, shall be valid and effective if given or taken only by the Company, whether or not any such other Borrower joins therein. Any notice, demand, consent, acknowledgement, direction, certification or



other communication delivered to the Company in accordance with the terms of this Agreement shall be deemed to have been delivered to the Company and each New Vehicle Borrower.

## 2.25 Used Vehicle Borrowers.

(a) Effective as of the date hereof, each Subsidiary that has executed this Agreement shall be a “Used Vehicle Borrower” hereunder and may receive Used Vehicle Floorplan Loans for its account on the terms and conditions set forth in this Agreement.

(b) If, at any time, any Subsidiary engages in the sale or leasing of Vehicles, the Company shall designate such Subsidiary as a Used Vehicle Borrower and shall deliver to the Administrative Agent, pursuant to Section 6.14 or otherwise, a Joinder Agreement executed by such Subsidiary identifying such Subsidiary as a Used Vehicle Borrower; provided that a Used Vehicle Borrower shall not be required to execute a Joinder Agreement if such Used Vehicle Borrower has executed and delivered this Agreement on the Closing Date and provided further that no Subsidiary that is a Foreign Subsidiary shall become a Used Vehicle Borrower. The parties hereto acknowledge and agree that prior to any such Subsidiary becoming entitled to utilize the Used Vehicle Floorplan Facility the Administrative Agent and the other Lenders shall have received the documents required by Section 6.14. Upon satisfaction of the foregoing requirements, each of the Used Vehicle Floorplan Lenders agrees to permit such Used Vehicle Borrower to receive Used Vehicle Floorplan Loans, other than Used Vehicle Floorplan Swing Line Loans, hereunder, on the terms and conditions set forth herein, and each of the parties agrees that such Used Vehicle Borrower otherwise shall be a Borrower for all purposes of this Agreement.

(c) Notwithstanding any other provision of this Agreement, each Used Vehicle Borrower shall be jointly and severally liable as a primary obligor, and not merely as surety, for any and all Obligations under the Used Vehicle Floorplan Facility now or hereafter owed to the Administrative Agent and the Used Vehicle Floorplan Lenders with respect to Used Vehicle Floorplan Committed Loans or related fees, in each case, whether voluntary or involuntary and however arising, whether direct or acquired by any Lender by assignment or succession, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined (such Obligations, the “Used Vehicle Floorplan Facility Liabilities”).

(d) With respect to the Used Vehicle Borrowers’ joint and several liability as provided hereunder, each Used Vehicle Borrower expressly waives any and all defenses now or hereafter arising or asserted by reason of (i) any lack of legality, validity or enforceability of this Agreement or any of the Related Agreement; (ii) any action taken under any of the Related Agreements, any exercise of any right or power therein conferred, any failure or omission to enforce any right conferred thereby, or any waiver of any covenant or condition therein provided; (iii) any acceleration of the maturity of any of the Used Vehicle Floorplan Facility Liabilities or of any other obligations or liabilities of any Person under any of the Related Agreements; (iv) any release, exchange, non-perfection, lapse in perfection, disposal, deterioration in value, or impairment of any security for any of the Used Vehicle Floorplan Facility Liabilities, or for any other obligations or liabilities of any Person under any of the Related Agreements; (v) any dissolution of any Borrower, any Loan Party or any other party to a Related Agreement, or the combination or consolidation of any Borrower, any Loan Party or any other party to a Related Agreement into or with another entity or any transfer or disposition of any assets of any Borrower, any Loan Party or any other party to a Related Agreement; (vi) any extension (including without limitation extensions of time for payment), renewal, amendment, restructuring or restatement of, any acceptance of late or partial payments under, or any change in the amount of any borrowings or any credit facilities available under, this Agreement, any of the Notes or any other Loan Document or any other Related Agreement, in whole or in part; (vii) the existence, addition, modification, termination, reduction or impairment of value, or release of any other guaranty (or security therefor) of the Used Vehicle Floorplan Facility Liabilities; (viii) any waiver of, forbearance or indulgence under, or other consent to any change in or departure from any term or provision contained in this Agreement, any other Loan Document or any other Related Agreement, including without limitation any term pertaining to the payment or performance of any of the Used Vehicle Floorplan Facility Liabilities, or any of the obligations or liabilities of any party to any other Related Agreement; and (ix) any other circumstance whatsoever (with or without notice to or knowledge of such Used Vehicle Borrower) which may or might in any manner or to any extent vary the risks of such Used Vehicle Borrower, or might otherwise constitute a legal or equitable defense available

to, or discharge of, a surety or a guarantor, including without limitation any right to require or claim that resort be had to any Borrower or any other Loan Party or to any collateral in respect of the Used Vehicle Floorplan Facility Liabilities. It is the express purpose and intent of the parties hereto that the joint and several liability of each Used Vehicle Borrower for the Used Vehicle Floorplan Facility Liabilities shall be absolute and unconditional under any and all circumstances and shall not be discharged except by payment as herein provided. Notwithstanding the foregoing, the liability of each Used Vehicle Borrower (other than the Company) with respect to its Used Vehicle Floorplan Facility Liabilities shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code of the United States or any comparable provisions of any applicable state law.

(e) Each Subsidiary that is or becomes a "Used Vehicle Borrower" pursuant to this Section 2.25 hereby irrevocably appoints the Company as its agent for all purposes relevant to this Agreement and each of the other Loan Documents, including (i) the giving and receipt of notices, (ii) the execution and delivery of all documents, instruments and certificates contemplated herein and all modifications hereto, and (iii) the receipt of the proceeds of any Used Vehicle Floorplan Committed Loans made by the Lenders to any such Used Vehicle Borrower hereunder. Any acknowledgment, consent, direction, certification or other action which might otherwise be valid or effective only if given or taken by all Borrowers, or by any Borrower acting singly, shall be valid and effective if given or taken only by the Company, whether or not any such other Borrower joins therein. Any notice, demand, consent, acknowledgement, direction, certification or other communication delivered to the Company in accordance with the terms of this Agreement shall be deemed to have been delivered to each Used Vehicle Borrower.

## **2.26 Cash Collateral**

(a) Certain Credit Support Events. Upon the request of the Administrative Agent or an L/C Issuer (i) if an L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, or (ii) if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, the Borrowers shall, in each case, immediately Cash Collateralize the then Outstanding Amount of all L/C Obligations (or in the case of clause (i), the amount of such L/C Borrowing). At any time that there shall exist a Defaulting Lender, immediately upon the request of the Administrative Agent, any L/C Issuer or any Swing Line Lender, the Borrowers, jointly and severally, shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover all Fronting Exposure (after giving effect to Section 2.27(a)(iv) and any Cash Collateral provided by the Defaulting Lender).

(b) Grant of Security Interest. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America. The Borrowers, and to the extent provided by any Lender, such Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuer and the Lenders (including the Swing Line Lenders), and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.26(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent or an L/C Issuer as herein provided, or that the total amount of such Cash Collateral is less than the applicable Fronting Exposure and other obligations secured thereby, the Borrowers or the relevant Defaulting Lender will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.26 or Sections 2.03, 2.04, 2.07, 2.12, 2.13, 2.27, 8.02 or 8.04 in respect of Letters of Credit or Swing Line Loans shall be held and applied to the satisfaction of the specific L/C Obligations, Swing Line Loans, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other

obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

(d) **Release.** Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with [Section 10.06\(b\)](#) (vi))) or (ii) the Administrative Agent's good faith determination that there exists excess Cash Collateral; provided, however, (x) that Cash Collateral furnished by or on behalf of a Loan Party shall not be released during the continuance of a Default or Event of Default (and following application as provided in this [Section 2.26](#) may be otherwise applied in accordance with [Section 8.06](#)), and (y) the Person providing Cash Collateral and the applicable L/C Issuer or applicable Swing Line Lender, as applicable, may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

## 2.27 Defaulting Lenders.

(a) **Adjustments.** Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) **Waivers and Amendments.** That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in [Section 10.01](#) and in the definition of Required Lenders.

(ii) **Reallocation of Payments.** Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to [Article VIII](#) or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to [Section 10.08](#)), shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to the applicable L/C Issuer or Swing Line Lender hereunder; *third*, if so determined by the Administrative Agent or requested by the applicable L/C Issuer or Swing Line Lender, to be held as Cash Collateral for future funding obligations of that Defaulting Lender of any participation in any Swing Line Loan or Letter of Credit; *fourth*, as the Company may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Company, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; *sixth*, to the payment of any amounts owing to the Lenders, the L/C Issuers or the Swing Line Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender, L/C Issuer or Swing Line Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Company as a result of any judgment of a court of competent jurisdiction obtained by the Company against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans under any Facility or L/C Borrowings in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans or L/C Borrowings were made at a time when the conditions set forth in [Section 4.02](#) were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Borrowings owed to, all non-Defaulting Lenders under the applicable Facility on a pro rata basis (and ratably among all applicable Facilities computed in accordance with the Defaulting Lenders' respective funding deficiencies) prior to being applied to the payment of any Loans of, or L/C Borrowings owed to, that Defaulting Lender under the applicable Facility. Any payments, prepayments or other amounts paid or

payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.27(a)(ii) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. That Defaulting Lender (x) shall not be entitled to receive any commitment fee pursuant to Section 2.17(a) for any period during which that Lender is a Defaulting Lender (and the Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender) and (y) shall be limited in its right to receive Letter of Credit Fees as provided in Section 2.03(h).

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit, Revolving Swing Line Loans, New Vehicle Floorplan Swing Line Loans and Used Vehicle Floorplan Swing Line Loans pursuant to Sections 2.03, 2.04, 2.07 and 2.12, the "Applicable Percentage" of each non-Defaulting Lender shall be computed without giving effect to the Commitment of such Defaulting Lender; provided, that, (i) each such reallocation shall be given effect only if, at the initial date thereof, no Default or Event of Default shall have occurred and be continuing; (ii) in all cases, the aggregate obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit or Revolving Swing Line Loans shall not exceed the positive difference, if any, of (1) the Revolving Commitment of such non-Defaulting Lender minus (2) the aggregate Outstanding Amount of the Revolving Committed Loans of that Lender, (ii) in all cases, the aggregate obligation of each non-Defaulting Lender to acquire, refinance or fund participations in New Vehicle Floorplan Swing Line Loans shall not exceed the positive difference, if any, of (1) the New Vehicle Floorplan Commitment of such non-Defaulting Lender minus (2) the aggregate Outstanding Amount of the New Vehicle Floorplan Committed Loans of such Lender, and (iii) in all cases, the aggregate obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Used Vehicle Floorplan Swing Line Loans shall not exceed the positive difference, if any, of (1) the Used Vehicle Floorplan Commitment of such non-Defaulting Lender minus (2) the aggregate Outstanding Amount of the Used Vehicle Floorplan Committed Loans of such Lender. Subject to Section 10.21, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation. If the reallocation described above cannot, or can only partially, be effected, the Borrowers shall, without prejudice to any right or remedy available to it hereunder or under applicable Law, (x) first, prepay Swing Line Loans in an amount equal to the Swing Line Lenders' Fronting Exposure and (y) second, Cash Collateralize the L/C Issuers' Fronting Exposure in accordance with the procedures set forth in Section 2.26.

(b) Defaulting Lender Cure. If the Company, the Administrative Agent, Swing Line Lender and the L/C Issuers agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Committed Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.27(a)(iv)), whereupon that Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of any Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

### ARTICLE III. TAXES, YIELD PROTECTION AND ILLEGALITY

#### 3.01 Taxes

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws (as determined in the good faith discretion of the Administrative Agent) require the deduction or withholding of any Tax from any such payment by the Administrative Agent or a Loan Party, then the Administrative Agent or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Loan Party or the Administrative Agent shall be required by the Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding taxes, from any payment, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made. Notwithstanding the foregoing, if any Loan Party determines, in its good faith discretion, that the Administrative Agent did not or does not intend to withhold or deduct any Taxes that any Loan Party or the Administrative Agent is required to withhold or deduct from any payment then any Loan Party shall be entitled (after notification to the Administrative Agent) to make such deductions or withholdings.

(iii) If any Loan Party or the Administrative Agent shall be required by any applicable Laws other than the Code to withhold or deduct any Taxes from any payment, then (A) such Loan Party or the Administrative Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Loan Party or the Administrative Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrowers. Without limiting the provisions of subsection (a) above, the Company and each other Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnifications.

(i) The Company and each other Borrower shall, and does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable

or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Company by a Lender or an L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or an L/C Issuer, shall be conclusive absent manifest error. The Company and each other Borrower shall, and does hereby, jointly and severally indemnify the Administrative Agent, and shall make payment in respect thereof within 10 days after demand therefor, for any amount which a Lender or an L/C Issuer for any reason fails to pay indefeasibly to the Administrative Agent as required pursuant to Section 3.01(c)(ii) below; provided, that the Company and each other Borrower shall not be required to indemnify the Administrative Agent for any amount attributable to the Administrative Agent's gross negligence. Upon receipt of such indemnity payment and upon the request of the Company, the Administrative Agent hereby agrees to assign to the ~~Borrower~~Borrowers any rights for compensation against such defaulting Lender or L/C Issuer (other than the right of set off pursuant to the last sentence of Section 3.01(c)(ii) below) with respect to the amount it has been indemnified by the Company or other Borrower.

(ii) Each Lender and each L/C Issuer shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, (x) the Administrative Agent against any Indemnified Taxes attributable to such Lender or such L/C Issuer (but only to the extent that any Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrowers to do so), (y) the Administrative Agent and the Borrowers, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.06(d) relating to the maintenance of a Participant Register and (z) the Administrative Agent and the Borrowers, as applicable, against any Excluded Taxes attributable to such Lender or such L/C Issuer, in each case, that are payable or paid by the Administrative Agent or a Borrower in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender and each L/C Issuer hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or such L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii).

(d) Evidence of Payments. Upon request by the Company, any other Borrower or the Administrative Agent, as the case may be, after any payment of Taxes by the Company, any other Borrower or by the Administrative Agent to a Governmental Authority as provided in this Section 3.01, the Company or such Borrower shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Company or such Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Company or such Borrower or the Administrative Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Company and the Administrative Agent, at the time or times reasonably requested by the Company or the Administrative Agent and at the time or times prescribed by applicable law, such properly completed and executed documentation reasonably requested by the Company or the Administrative Agent or prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Company or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Company or the Administrative Agent as will enable the Company or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding

anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that any Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Company and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Company or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Company and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Company or the Administrative Agent), whichever of the following is applicable:

(I) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN-E (or W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN-E (or W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(II) executed copies of IRS Form W-8ECI;

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit O-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of any Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN-E (or W-8BEN, as applicable); or

(IV) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E (or W-8BEN, as applicable), a U.S. Tax Compliance Certificate substantially in the form of Exhibit O-2 or Exhibit O-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit O-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Company and the Administrative Agent (in such number of copies as shall

be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Company or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Company or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Company and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Company or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Company or the Administrative Agent as may be necessary for the Company and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. For purposes of determining withholding Taxes imposed under FATCA from and after the effective date of this Agreement, the Borrowers and the Administrative Agent shall treat (and the Lenders hereby authorize the Administrative Agent to treat) the Loans hereunder and this Agreement as not qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Company and the Administrative Agent in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or an L/C Issuer, or have any obligation to pay to any Lender or any L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or such L/C Issuer, as the case may be. If any Recipient determines, in its sole discretion, that it has received a refund of any Taxes as to which it has been indemnified by the Company or any other Borrower or with respect to which the Company or any Borrower has paid additional amounts pursuant to this Section 3.01, it shall pay to the Company or such Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Company under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Company and each other Borrower, upon the request of the Recipient, agrees to repay the amount paid over to the Company or such Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to the Company or any other Borrower pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Company, any other Borrower, or any other Person.



(g) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender or an L/C Issuer, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

### 3.02 Illegality

If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to perform any of its obligations hereunder or make, maintain or fund or charge any interest with respect to any Credit Extension, or to determine or charge interest rates based upon ~~the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market~~ Daily Simple SOFR, then, on notice thereof by such Lender to the Company through the Administrative Agent, (i) any obligation of such Lender to issue, make, maintain, fund or charge interest with respect to any Credit Extension or continue ~~Eurodollar Rate~~ Daily Simple SOFR Loans or to convert Base Rate Committed Loans to ~~Eurodollar Rate~~ Daily Simple SOFR Committed Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the ~~Eurodollar Rate~~ Daily Simple SOFR component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the ~~Eurodollar Rate~~ Daily Simple SOFR component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Company that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Company and each other Borrower (jointly and severally) shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all ~~Eurodollar Rate~~ Daily Simple SOFR Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the ~~Eurodollar Rate~~ Daily Simple SOFR component of the Base Rate), ~~either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans~~ immediately and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon ~~the Eurodollar Rate~~ Daily Simple SOFR, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the ~~Eurodollar Rate~~ Daily Simple SOFR component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon ~~the Eurodollar Rate~~ Daily Simple SOFR. Upon any such prepayment or conversion, the Company and each other Borrower (jointly and severally) shall also pay accrued interest on the amount so prepaid or converted.

### 3.03 Inability to Determine Rates

(a) If in connection with any request for a ~~Eurodollar Rate~~ Daily Simple SOFR Loan or a conversion ~~to of Base Rate Loans to Daily Simple SOFR Loans~~ or a continuation ~~thereof of Daily Simple SOFR Loans, as applicable~~, (i) the Administrative Agent determines ~~(which determination shall be conclusive absent manifest error)~~ that (A) ~~Dollar deposits are not being offered to banks in the London interbank Eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan~~ no Successor Rate has been determined in accordance with Section 3.03(b), and the circumstances under clause (i) of Section 3.03(b) or the Scheduled Unavailability Date has occurred, or (B) ~~(x)~~ adequate and reasonable means do not otherwise exist for determining ~~the Eurodollar Rate~~ Daily Simple SOFR for any requested Interest Period with respect to a proposed ~~Eurodollar Rate~~ Daily Simple SOFR Loan or in connection with an existing or proposed Base Rate Loan ~~and (y) the circumstances described in Section 3.03(c)(i) do not apply (in each case with respect to this clause (i), "Impacted Loans")~~, or (ii) the Administrative Agent or the Required Lenders determine that for any reason ~~the Eurodollar Rate for any requested Interest Period~~ that Daily Simple SOFR with respect to a proposed ~~Eurodollar Rate~~ Daily Simple SOFR Loan does not adequately and fairly reflect the cost to such Lenders of funding such ~~Eurodollar Rate~~ Daily Simple SOFR Loan, the Administrative Agent will promptly so notify the Company and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain ~~Eurodollar Rate~~ Daily Simple

SOFR Loans shall be suspended, (to the extent of the affected Eurodollar Rate Daily Simple SOFR Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate Daily Simple SOFR component of the Base Rate, the utilization of the Eurodollar Rate Daily Simple SOFR component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (or, in the case of a determination by the Required Lenders described in clause (ii) of Section 3.03(a), until the Administrative Agent upon instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, (i) the Borrower Company may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Daily Simple SOFR Loans (to the extent of the affected Eurodollar Rate Daily Simple SOFR Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Committed Borrowing of Base Rate Loans in the amount specified therein and (ii) any outstanding Daily Simple SOFR Loans shall be deemed to have been converted to Base Rate Loans immediately.

~~(b) Notwithstanding the foregoing, if the Administrative Agent has made the determination described in clause (i) of Section 3.03(a), the Administrative Agent, in consultation with the Company and the affected Lenders, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (1) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under clause (i) of the first sentence of Section 3.03(a), (2) the Administrative Agent or the Required Lenders notify the Administrative Agent and the Company that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans, or (3) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Company written notice thereof.~~

(b) (e) Replacement of Daily Simple SOFR or Successor Rate. Notwithstanding anything to the contrary in this Agreement or any other Loan Document Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Company or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Company) that the Company or Required Lenders (as applicable) have determined, that:

~~(i) On March 5, 2021 the Financial Conduct Authority (“FCA”), the regulatory supervisor of LIBOR’s administrator (“IBA”), announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1 week, 1 month, 2 month, 3 month, 6 month and 12-month U.S. dollar LIBOR tenor settings. On the earliest of (A) the date that all Available Tenors of U.S dollar LIBOR have permanently or indefinitely ceased to be provided by IBA or have been announced by the FCA pursuant to public statement or publication of information to be no longer representative, (B) June 30, 2023 and (C) the Early Opt in Effective Date in respect of a SOFR Early Opt in, if the then current Benchmark is LIBOR, the Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Loan Document. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.~~

~~(ii) (x) Upon (A) the occurrence of a Benchmark Transition Event or (B) a determination by the Administrative Agent that neither of the alternatives under clause (1) of the definition of Benchmark Replacement are available, the Benchmark Replacement will replace the then current Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. on the fifth (5<sup>th</sup>) Business Day after the date notice of such Benchmark Replacement is provided to~~

~~the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders (and any such objection shall be conclusive and binding absent manifest error); provided that solely in the event that the then current Benchmark at the time of such Benchmark Transition Event is not a SOFR-based rate, the Benchmark Replacement therefor shall be determined in accordance with clause (1) of the definition of Benchmark Replacement unless the Administrative Agent determines that neither of such alternative rates is available.~~

~~(y) On the Early Opt in Effective Date in respect of an Other Rate Early Opt in, the Benchmark Replacement will replace LIBOR for all purposes hereunder and under any Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Loan Document.~~

~~(iii) — At any time that the administrator of the then current Benchmark has permanently or indefinitely ceased to provide such Benchmark or such Benchmark has been announced by the regulatory supervisor for the administrator of such Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored, the Borrower may revoke any request for a borrowing of, conversion to or continuation of Loans to be made, converted or continued that would bear interest by reference to such Benchmark until the Borrower's receipt of notice from the Administrative Agent that a Benchmark Replacement has replaced such Benchmark, and, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans. During the period referenced in the foregoing sentence, the component of Base Rate based upon the Benchmark will not be used in any determination of Base Rate.~~

~~(iv) — In connection with the implementation and administration of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.~~

~~(v) — The Administrative Agent will promptly notify the Borrower and the Lenders of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by the Administrative Agent pursuant to this Section 3.03(c), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 3.03(c).~~

~~(vi) At any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate (including Term SOFR or LIBOR), then the Administrative Agent may remove any tenor of such Benchmark that is unavailable or non-representative for Benchmark (including Benchmark Replacement) settings and (B) the Administrative Agent may reinstate any such previously removed tenor for Benchmark (including Benchmark Replacement) settings.~~

Definitions:

~~“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate, any tenor for such Benchmark that is or may be used for determining the length of an Interest Period or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date.~~

~~“Benchmark” means, initially, LIBOR; provided that if a replacement of the Benchmark has occurred pursuant to Section 3.03(c) then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate. Any reference to “Benchmark” shall include, as applicable, the published component used in the calculation thereof.~~

~~“Benchmark Replacement” means:~~

~~(1) For purposes of Section 3.03(c)(i), the first alternative set forth below that can be determined by the Administrative Agent:~~

~~(a) the sum of: (i) Term SOFR and (ii) 0.11448% (11.448 basis points) for an Available Tenor of one-month’s duration, or~~

~~(b) the sum of: (i) Daily Simple SOFR and (ii) 0.11448% (11.448 basis points);~~

~~provided that, if initially LIBOR is replaced with the rate contained in clause (b) above (Daily Simple SOFR plus the applicable spread adjustment) and subsequent to such replacement, the Administrative Agent determines that Term SOFR has become available and is administratively feasible for the Administrative Agent in its sole discretion, and the Administrative Agent notifies the Borrower and each Lender of such availability, then from and after the beginning of the Interest Period, relevant interest payment date or payment period for interest calculated, in each case, commencing no less than thirty (30) days after the date of such notice, the Benchmark Replacement shall be as set forth in clause (a) above; and~~

~~(2) For purposes of Section 3.03(c)(ii), the sum of (a) the alternate benchmark rate and (b) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by the Administrative Agent and the Borrower as the replacement Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by a Relevant Governmental Body, for U.S. dollar-denominated syndicated credit facilities at such time;~~

~~provided~~ that, if the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement and the other Loan Documents.

~~Any Benchmark Replacement shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, such Benchmark Replacement shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.~~

~~“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).~~

~~(i) adequate and reasonable means do not exist for ascertaining Daily Simple SOFR, including, without limitation, because the Daily Simple SOFR Published Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or~~

~~“Benchmark Transition Event” means, with respect to any then current Benchmark other than LIBOR, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then current Benchmark (ii) \_\_\_\_\_ or any successor administrator of the Daily Simple SOFR Published Rate or a Governmental Authority with having jurisdiction over such administrator announcing or stating that all Available Tenors are or such administrator with respect to its publication of Daily Simple SOFR, in each case acting in such capacity, has made a public statement identifying a specific date after which Daily Simple SOFR or the Daily Simple SOFR Published Rate shall or will no longer be representative, or made available, or permitted to be used for determining the interest rate of U.S. dollar denominated syndicated loans, or shall or will otherwise cease, provided that, at the time of such statement or publication, there is no successor administrator that is satisfactory to the Administrative Agent, that will continue to provide any representative tenors of such Benchmark Daily Simple SOFR after such specific date. (the latest date on which Daily Simple SOFR or the Daily Simple SOFR Published Rate is no longer available permanently or indefinitely, the “Scheduled Unavailability Date”);~~

~~“Daily Simple SOFR” with respect to any applicable determination date means the secured overnight financing rate (“SOFR”) published on such date by the Federal Reserve Bank of New York, as the administrator of the benchmark (or a successor administrator) on the Federal Reserve Bank of New York’s website (or any successor source).~~

~~“Early Opt in Effective Date” means, with respect to any Early Opt in Election, the sixth (6th) Business Day after the date notice of such Early Opt in Election is provided to the Lenders, so long as the~~

~~Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt in Election is provided to the Lenders, written notice of objection to such Early Opt in Election from Lenders comprising the Required Lenders.~~

~~“Early Opt in Election” means the occurrence of:~~

- ~~(1) a determination by the Administrative Agent, or a notification by the Borrower to the Administrative Agent that the Borrower has made a determination, that U.S. dollar denominated syndicated credit facilities currently being executed, or that include language similar to that contained in Section 3.03(c), are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR, and~~
- ~~(2) the joint election by the Administrative Agent and the Borrower to replace LIBOR with a Benchmark Replacement and the provision by the Administrative Agent of written notice of such election to the Lenders.~~

~~“Other Rate Early Opt in” means the Administrative Agent and the Borrower have elected to replace LIBOR with a Benchmark Replacement other than a SOFR-based rate pursuant to (1) an Early Opt in Election and (2) Section 3.03(c)(ii) and paragraph (2) of the definition of “Benchmark Replacement”.~~

~~“Relevant Governmental Body” means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.~~

~~“SOFR Early Opt in” means the Administrative Agent and the Borrower have elected to replace LIBOR pursuant to (1) an Early Opt in Election and (2) Section 3.03(c)(i) and paragraph (1) of the definition of “Benchmark Replacement”.~~

~~“Term SOFR” means, for the applicable corresponding tenor (or if any Available Tenor of a Benchmark does not correspond to an Available Tenor for the applicable Benchmark Replacement, the closest corresponding Available Tenor and if such Available Tenor corresponds equally to two Available Tenors of the applicable Benchmark Replacement, the corresponding tenor of the shorter duration shall be applied), the forward looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.~~

~~then, on a date and time determined by the Administrative Agent (any such date, the “Daily Simple SOFR Replacement Date”), which date shall be on the relevant interest payment date, as applicable, for interest calculated and, solely with respect to clause (ii) above, no later than the Scheduled Unavailability Date, the Administrative Agent and the Company may amend this Agreement solely for the purpose of replacing Daily Simple SOFR or any then current Successor Rate in accordance with this Section 3.03 at the relevant interest payment date or payment period for interest calculated, as applicable, with an alternative benchmark rate giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities syndicated and agented in the United States for such alternative benchmark, and, in each case, including any mathematical or other adjustments to such benchmark giving due~~

consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities syndicated and agented in the United States for such benchmark, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate and adjustments, shall constitute a "Successor Rate". Any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Company unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to such amendment.

The Administrative Agent will promptly (in one or more notices) notify the Company and each Lender of the implementation of any Successor Rate.

Any Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, such Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than zero, the Successor Rate will be deemed to be zero for the purposes of this Agreement and the other Loan Documents.

In connection with the implementation of a Successor Rate, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Company and the Lenders reasonably promptly after such amendment becomes effective.

For purposes of this Section 3.03, those Lenders that either have not made, or do not have an obligation under this Agreement to make, the relevant Loans in Dollars shall be excluded from any determination of Required Lenders.

### **3.04 Increased Costs.**

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(e)) or any L/C Issuer;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or any L/C Issuer or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or ~~Eurodollar Rate~~ Daily Simple SOFR Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting, continuing or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or such L/C Issuer of participating in, issuing or maintaining any

Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or such L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or such L/C Issuer, the Company and each other Borrower (jointly and severally) will pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or any L/C Issuer determines that any Change in Law affecting such Lender or such L/C Issuer or any Lending Office of such Lender or such Lender's or such L/C Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or such L/C Issuer's capital or on the capital of such Lender's or such L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swing Line Loans held by, such Lender, or the Letters of Credit issued by such L/C Issuer, to a level below that which such Lender or such L/C Issuer or such Lender's or L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such L/C Issuer's policies and the policies of such Lender's or such L/C Issuer's holding company with respect to capital adequacy), then from time to time the Company and each other Borrower (jointly and severally) will pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or an L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or such L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Company shall be conclusive absent manifest error. The Company and each other Borrower shall pay such Lender or such L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or any L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or such L/C Issuer's right to demand such compensation, provided that neither the Company nor any other Borrower shall be required to compensate a Lender or such L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or such L/C Issuer, as the case may be, notifies the Company of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

~~(e) Reserves on Eurodollar Rate Loans. The Company and each other Borrower, jointly and severally, shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurodollar Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error), which shall be due and payable on each date on which interest is payable on such Loan, provided the Company shall have received at least 10 days' prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice 10 days prior to the relevant Interest Payment Date, such additional interest shall be due and payable 10 days from receipt of such notice.~~

### **3.05 Mitigation Obligations; Replacement of Lenders.**

(a) Designation of a Different Lending Office. Each Lender may make any Credit Extension to the Borrowers through any Lending Office, provided that the exercise of this option shall not affect the obligation of the Borrowers to repay the Credit Extension in accordance with the terms of this Agreement. If any Lender requests compensation under Section 3.04, or the Company or any other Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender, any L/C Issuer, or any



Governmental Authority for the account of any Lender or any L/C Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then at the request of the Company such Lender or such L/C Issuer shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender or such L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender or such L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or such L/C Issuer, as the case may be. The Company and each other Borrower (jointly and severally) hereby agrees to pay all reasonable costs and expenses incurred by any Lender or any L/C Issuer in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Company or any other Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 3.05(a), the Company may replace such Lender in accordance with Section 10.13.

### **3.06 Survival**

. All of the Company's and each other Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, and resignation of the Administrative Agent.

## **ARTICLE IV. CONDITIONS PRECEDENT TO CREDIT EXTENSIONS**

### **4.01 Conditions of Initial Credit Extension**

. The effectiveness of this Agreement and the amendment and restatement of the Existing Credit Agreement is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Administrative Agent and each of the Lenders:

(i) executed counterparts of (A) this Agreement sufficient in number for distribution to the Administrative Agent and its counsel, each Lender and the Company and (B) (1) the Security Agreement, (2) the Pledge Agreement, (3) the Escrow and Security Agreement and (4) each Guaranty required to be delivered in connection herewith, in each case, sufficient in number for distribution to the Administrative Agent, the Administrative Agent's counsel and the Company;

(ii) (A) a Revolving Note executed by the Company in favor of each Lender requesting a Revolving Note, (B) a New Vehicle Floorplan Note executed by the New Vehicle Borrowers in favor of each Lender requesting a New Vehicle Floorplan Note, and (C) a Used Vehicle Floorplan Note executed by the Used Vehicle Borrowers in favor of each Lender requesting a Used Vehicle Floorplan Note;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party;

(iv) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in the respective jurisdictions specified in Schedule 4.01, which includes each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(v) a favorable opinion of Jones Day, counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, in the form attached as Exhibit L;

(vi) a favorable opinion of local counsel to the Loan Parties in Florida and North Carolina, addressed to the Administrative Agent and each Lender in form and substance reasonably satisfactory to the Administrative Agent;

(vii) a certificate of a Responsible Officer of each Loan Party either (A) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required;

(viii) a certificate signed by a Responsible Officer of the Company certifying (A) that the conditions specified in Sections 4.02(a) and (b) have been satisfied, and (B) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect and (C) as to the absence of any action, suit, investigation or proceeding pending or, to the knowledge of the Company, threatened in any court or before any arbitrator or Governmental Authority that could reasonably be expected to have a Material Adverse Effect;

(ix) a certificate signed by the chief financial officer, treasurer or chief accounting officer of the Company, certifying that the Company individually is Solvent and the Loan Parties taken as a whole are Solvent, in each case after giving effect to this Agreement and the other Loan Documents and the Indebtedness pursuant hereto and thereto;

(x) a duly completed Compliance Certificate in form and substance satisfactory to the Administrative Agent as of the last day of the fiscal quarter of the Company ended on June 30, 2019, signed by a Responsible Officer of the Company;

(xi) a duly completed Revolving Borrowing Base Certificate in form and substance reasonably satisfactory to the Administrative Agent dated as of the Closing Date certifying as to the Revolving Borrowing Base as of June 30, 2019, signed by a Responsible Officer of the Company;

(xii) a duly completed Used Vehicle Floorplan Borrowing Base Certificate, in form and substance reasonably satisfactory to the Administrative Agent dated as of the Closing Date certifying as to the Used Vehicle Floorplan Borrowing Base as of August 31, 2019, signed by a Responsible Officer of the Company;

(xiii) a certificate of a Responsible Officer of the Company evidencing that no consents or waivers are required pursuant to any Franchise Agreement or Framework Agreement that have not been obtained;

(xiv) duly executed consents and waivers required pursuant to any Franchise Agreement or Framework Agreement (if any);

(xv) a certificate of a Responsible Officer of the Company certifying that there have been no changes to the indenture delivered on and as in effect as of July 25, 2016 except (a) the

addition of more guarantors and (b) changes reflected in supplements or amendments publicly filed with the SEC in accordance with SEC requirements;

(xvi) evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect, including endorsements naming the Administrative Agent (on behalf of the Secured Parties ) as an additional insured or lender's loss payee, as the case may be, on all insurance policies maintained with respect to properties of the Company or any Loan Party constituting part of the Collateral;

(xvii) consolidated balance sheets for the Company and each Subsidiary as at the end of June 30, 2019, and the related consolidated statements of income or operations, all in reasonable detail prepared by management of the Company or such Subsidiary, including designations of New Vehicle and Used Vehicle inventories and associated lien payoffs;

(xviii) forecasts (including assumptions) prepared by the management of the Company of consolidated balance sheets, income statements and cash flow statements for the Company and its Subsidiaries, in each case in form and substance reasonably satisfactory to the Administrative Agent for each of the first five fiscal years following the Closing Date;

(xix) delivery by the Company and each applicable Loan Party owning any Equity Interests required to be pledged (if any) pursuant to this Agreement or the Pledge Agreement of all stock certificates evidencing such pledged Equity Interests, accompanied in each case by duly executed stock powers (or other appropriate transfer documents) in blank affixed thereto and (y) delivery by the Company and each other applicable Loan Party owning any Equity Interests required to be delivered in escrow pursuant to the Escrow and Security Agreement of all stock certificates evidencing such Equity Interests

(xx) UCC financing statements for filing in all places required by applicable law to perfect the Liens of the Administrative Agent for the benefit of the Secured Parties under the Security Instruments as a perfected Lien as to items of Collateral in which a security interest may be perfected by the filing of financing statements;

(xxi) UCC search results with respect to the Borrowers showing only Liens acceptable to the Administrative Agent (or pursuant to which arrangements reasonably satisfactory to the Administrative Agent shall have been made to remove any unacceptable Liens promptly after the Closing Date);

(xxii) a certificate signed by a Responsible Officer of the Company certifying as to the identity of any Unrestricted Subsidiaries and that such Subsidiaries meet the requirements to be Unrestricted Subsidiaries;

(xxiii) with respect to any Eligible Borrowing Base Real Estate that is reflected in the Revolving Borrowing Base Certificate delivered pursuant to clause (xi) above, each of the following, in form and substance reasonably acceptable to the Administrative Agent: (A) a FIRREA-conforming appraisal, (B) a Phase I (and, if reasonably requested by the Administrative Agent, a Phase II) environmental report for such property, and (C) such other reports or certifications as related to such Eligible Borrowing Base Real Estate as the Administrative Agent may reasonably request;

(xxiv) Landlord Waivers, if any, that have been received by the Company or any Subsidiary on or prior to the Closing Date;

(xxv) copies of any executed Service Loaner Intercreditor Agreement with respect to any Permitted Service Loaner Indebtedness and the FMCC Intercreditor Agreement; in each case as in effect as the date hereof, and if required pursuant to the terms hereof, any additional Service Loaner Intercreditor Agreements;

(xxvi) a completed environmental questionnaire covering all Loan Parties' properties (whether leased or owned);

(xxvii) a form FR U-1 executed by the Company and a duly authorized representative of the Administrative Agent; and

(xxviii) such other assurances, certificates, documents, consents or opinions as the Administrative Agent, any L/C Issuer, the Revolving Swing Line Lender, the New Vehicle Floorplan Swing Line Lender, the Used Vehicle Floorplan Swing Line Lender or the Required Lenders reasonably may require.

(b) (i) Upon the reasonable request of any Lender made at least ten (10) days prior to the Closing Date, the Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the Act, in each case at least five (5) Business Days prior to the Closing Date and (ii) at least five (5) Business Days prior to the Closing Date, any Loan Party that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall have delivered, to each Lender that so requests, a Beneficial Ownership Certification in relation to such Loan Party.

(c) Any fees required to be paid on or before the Closing Date shall have been paid.

(d) Unless waived by the Administrative Agent, the Company shall have paid all accrued fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Company and the Administrative Agent).

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

#### **4.02 Conditions to all Credit Extensions other than New Vehicle Floorplan Swing Line Borrowings pursuant to a Payment Commitment, a Payoff Letter Commitment or the Floorplan On-Line System**

. The obligation of each Lender to honor any Request for Credit Extension (other than pursuant to (x) a Request for Credit Extension requesting only a conversion of Loans to the other Type, (y) a Payment Commitment, or (z) a Payoff Letter Commitment) is subject to the following conditions precedent (provided, that, with respect to any Request for Credit Extension for Committed Loans the proceeds of which are intended to be and are actually used to finance one or more Permitted Acquisitions which are subject to customary "certain funds provisions", the conditions to making such Committed Loans may be modified to reflect customary "certain funds provisions" as agreed to by the Administrative Agent and the Company):

(a) The representations and warranties of the Company and each other Loan Party contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects (or in all respects in the case of any representation and warranty qualified by materiality or Material Adverse Effect) on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained

in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01.

(b) No Default shall exist or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Administrative Agent and, if applicable, the applicable L/C Issuer, the Revolving Swing Line Lender or the Used Vehicle Floorplan Swing Line Lender shall have received, to the extent otherwise required under Section 2.02, 2.03, 2.04, 2.11 or 2.12, a Request for Credit Extension in accordance with the requirements hereof.

(d) In the case of any Revolving Borrowing, the Total Revolving Outstandings after giving effect to such Request for Credit Extension shall not exceed the lesser of the Aggregate Revolving Commitments or the Revolving Borrowing Base on such date.

(e) If the applicable Borrower is a New Vehicle Borrower, then the conditions of Section 2.24 to the designation of such Borrower as a New Vehicle Borrower shall have been met to the satisfaction of the Administrative Agent.

(f) If the applicable Borrower is a Used Vehicle Borrower, then the conditions of Section 2.25 to the designation of such Borrower as a Used Vehicle Borrower shall have been met.

(g) In the case of any Used Vehicle Floorplan Borrowing, the Total Used Vehicle Floorplan Outstandings after giving effect to such Request for Credit Extensions shall not exceed the lesser of the Aggregate Used Vehicle Floorplan Commitments or the Used Vehicle Floorplan Borrowing Base on such date.

(h) Each Request for Credit Extension (other than a Request for Credit Extension requesting only a conversion of Loans to the other Type) submitted by the Company shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

(i) Notwithstanding the conditions specified in Sections 4.02(a) and (b) above, with respect to the portion of any Credit Extension that is used solely to finance any part of the Miller Acquisition, Sections 4.02(a) and (b) shall not apply with respect to such Credit Extension, but the following conditions shall apply:

(i) The Administrative Agent shall have received all documents, and evidence reasonably satisfactory to the Administrative Agent that all other actions have been taken, in each case required by Sections 2.24, 2.25 and 6.14 of the Credit Agreement with respect to any Subsidiary that (a) did not execute the Credit Agreement on the Closing Date as a New Vehicle Borrower and Used Vehicle Borrower and (b) will acquire assets in connection with the Miller Acquisition or whose Equity Interests will be acquired in connection with the Miller Acquisition (each a "Miller Restricted Subsidiary"), each in form and substance satisfactory to the Administrative Agent and each of the Lenders.

(ii) The Administrative Agent shall have received the following, each of which (in the case of clauses (D) and (L)) shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each of which (in the case of clauses (B), (E), (F), (G), (H), and (L)) shall be properly executed by a Responsible Officer of the signing Loan Party, each dated the date of such Credit Extension (or, in the case of certificates of governmental officials or the items referred to in clauses (C) and (I) through (J) below, a recent date before the date of such Credit Extension) and each in form and substance satisfactory to the Administrative Agent and each of the Lenders:

(A) evidence that all insurance required to be maintained with respect to each Miller Restricted Subsidiary pursuant to the Loan Documents has been obtained and is in

effect, including endorsements naming the Administrative Agent (on behalf of the Secured Parties) as an additional insured or lender's loss payee, as the case may be, on all insurance policies maintained with respect to properties of such Miller Restricted Subsidiary constituting part of the Collateral;

(B) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Miller Restricted Subsidiary as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with the Loan Documents to which such Miller Restricted Subsidiary is a party;

(C) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Miller Restricted Subsidiary is duly organized or formed, and that such Miller Restricted Subsidiary is validly existing, in good standing and qualified to engage in business in the jurisdiction of its organization or formation, and each other jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(D) favorable opinions of Jones Day, counsel to the Loan Parties, and, if requested by the Administrative Agent in its sole discretion, of local counsel to the Loan Parties in each state where a Miller Restricted Subsidiary is organized, in each case addressed to the Administrative Agent and each Lender, in form and substance reasonably satisfactory to the Administrative Agent;

(E) a certificate signed by a Responsible Officer of the Company certifying that the conditions specified in Sections 4.02(i)(iii) and (iv) have been satisfied);

(F) in connection with the first Credit Extension that is used in whole or in part to finance any part of the Miller Acquisition, a Pro Forma Compliance Certificate in form and substance satisfactory to the Administrative Agent demonstrating compliance with the financial covenants as of the last day of the fiscal quarter of the Company most recently ended prior to the date of execution of the Miller Acquisition Documents for which financial statements have been delivered pursuant to Section 6.01(a) or (b) of the Credit Agreement, giving pro forma effect to the Miller Acquisition and the Acquisition Indebtedness (assuming the entire principal amount thereof is fully funded) signed by a Responsible Officer of the Company;

(G) in connection with the first Credit Extension that is used in whole or in part to finance any part of the Miller Acquisition, a duly completed Pro Forma Revolving Borrowing Base Certificate in form and substance reasonably satisfactory to the Administrative Agent dated as of the date of such Credit Extension certifying as to the Revolving Borrowing Base as of September 30, 2021, giving pro forma effect to the Miller Acquisition and the Acquisition Indebtedness (assuming the entire principal amount thereof is fully funded) signed by a Responsible Officer of the Company;

(H) in connection with the first Credit Extension that is used in whole or in part to finance any part of the Miller Acquisition, a duly completed Pro Forma Used Vehicle Floorplan Borrowing Base Certificate, in form and substance reasonably satisfactory to the Administrative Agent dated as of the date of such Credit Extension certifying as to the Used Vehicle Floorplan Borrowing Base as of the last day of the most recently ending month, giving pro forma effect to the Miller Acquisition and the Acquisition Indebtedness (assuming the entire principal amount thereof is fully funded) signed by a Responsible Officer of the Company;

(I) in connection with the first Credit Extension that is used in whole or in part to finance any part of the Miller Acquisition, pro forma consolidated balance sheets

for the Company and each Subsidiary as of ~~September 30~~ September 30, 2021, and the related consolidated statements of income or operations, all in reasonable detail prepared by management of the Company, giving pro forma effect to the Miller Acquisition and the Acquisition Indebtedness (assuming the entire principal amount thereof is fully funded);

(J) UCC search results with respect to all sellers under the Miller Acquisition Documents and all Miller Restricted Subsidiaries showing only Liens permitted hereunder (or pursuant to which arrangements reasonably satisfactory to the Administrative Agent shall have been made to remove any Liens not permitted hereunder on or prior to the date of such Credit Extension);

(K) with respect to any Eligible Borrowing Base Real Estate that is reflected in the Revolving Borrowing Base Certificate delivered pursuant to clause (G) above, each of the following, in form and substance reasonably acceptable to the Administrative Agent: (A) a FIRREA-conforming appraisal, (B) a Phase I (and, if reasonably requested by the Administrative Agent, a Phase II) environmental report for such property, and (C) such other reports or certifications as related to such Eligible Borrowing Base Real Estate as the Administrative Agent may reasonably request;

(L) if any Miller Restricted Subsidiary has a service loaner program with any Manufacturer or financial affiliate of a Manufacturer, a Service Loaner Intercreditor Agreement with respect to such program; and

(M) evidence satisfactory to the Administrative Agent that the transactions with respect to the respective business associated with each real property to be financed by the Real Estate Credit Facility on the date of such Credit Extension shall have been consummated on or prior to such date in accordance with the Miller Acquisition Documents in all material respects and all applicable requirements of law, without giving effect to any amendments, consents or waivers by the Company that are materially adverse to the Administrative Agent or the Lenders without the prior written consent of the Administrative Agent (such consent not to be unreasonably withheld, delayed or conditioned) (it being understood that (x) any reduction in the purchase price of, or consideration for, the Miller Acquisition is not material and adverse to the interests of the Administrative Agent or the Lenders, so long as such reduction in the cash consideration is less than 10.0% of the original purchase price and (y) any amendment to the definition of "Material Adverse Effect" or "Acquired Companies MAE" is materially adverse to the interests of Administrative Agent and the Lenders).

(iii) The Specified Acquisition Agreement Representations shall be true and correct on the date of such Credit Extension, both immediately before and after giving effect to the Miller Acquisition and the Acquisition Indebtedness.

(iv) The Specified Representations shall be true and correct on the date of such Credit Extension in all material respects, both immediately before and after giving effect to the Miller Acquisition and the Acquisition Indebtedness.

(v) No Specified Event of Default shall have occurred and be continuing as of the date of such Credit Extension, both immediately before and after giving effect to the Miller Acquisition and the Acquisition Indebtedness.

(vi) There has been no event or circumstance since the date of execution of the Miller Acquisition Documents that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect or Acquired Companies MAE (each as defined in the Miller Acquisition Documents).

(vii) (A) Upon the reasonable request of any Lender made at least ten (10) Business Days prior to the date of such Credit Extension, each Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the Act, in each case at least three (3) Business Days prior to the date of such Credit Extension and (B) at least three (3) Business Days prior to the date of such Credit Extension, any Loan Party that qualifies as a “legal entity customer” under the Beneficial Ownership Regulation shall have delivered, to each Lender that so requests, a Beneficial Ownership Certification in relation to such Loan Party.

#### **4.03 Conditions to all New Vehicle Floorplan Swing Line Borrowings pursuant to a Payment Commitment, a Payoff Letter Commitment or the Floorplan On-Line System**

. The obligation of the New Vehicle Floorplan Swing Line Lender to honor any request for a New Vehicle Floorplan Borrowing pursuant to a Payment Commitment, a Payoff Letter Commitment or the Floorplan On-Line System is subject to the following conditions precedent:

(a) to the extent required pursuant to the terms of such Payment Commitment, Payoff Letter Commitment or Floorplan On-Line System, as the case may be, the New Vehicle Floorplan Swing Line Lender shall have received a manufacturer/distributor invoice, cash draft, electronic record, depository transfer check, sight draft, or such other documentation as may be specified in such Payment Commitment, Payoff Letter Commitment or Floorplan On-Line System, identifying the Vehicles delivered or to be delivered to the applicable New Vehicle Borrower; and

(b) any other conditions precedent set forth in such Payment Commitment, Payoff Letter Commitment or Floorplan On-Line System.

### **ARTICLE V. REPRESENTATIONS AND WARRANTIES**

Each of the Company and each Vehicle Borrower represents and warrants to the Administrative Agent and the Lenders that:

#### **5.01 Existence, Qualification and Power**

. Each Loan Party and each Subsidiary (other than the Specified Insurance Subsidiaries) thereof (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

#### **5.02 Authorization; No Contravention**

. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries, or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law; except, in the case of clause (b)(i) or (c), to the extent such contravention, conflict or violation would not reasonably be expected to have Material Adverse Effect.

#### **5.03 Governmental Authorization; Other Consents**



. No registration with, or consent or approval of, or other action by, any federal, state or other Governmental Authority is or will be required in connection with the execution, delivery and performance of this Agreement or any other Loan Document, the execution and delivery of the Notes or repayment of the Borrowings hereunder.

#### **5.04 Binding Effect**

. This Agreement and each of the Loan Documents have been duly executed and delivered by each Loan Party which is a party thereto and constitute legal, valid and binding obligations of each Loan Party party thereto enforceable in accordance with their respective terms, subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium and similar Laws affecting creditors' rights generally and general principles of equity.

#### **5.05 Financial Statements; No Material Adverse Effect.**

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (ii) fairly present in all material respects the financial condition of the Company and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein.

(b) The unaudited consolidated balance sheets of the Company and its Subsidiaries dated June 30, 2019, and the related consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of the Company and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

#### **5.06 Litigation**

. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Company after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against the Company or any of its Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) except as specifically disclosed in Schedule 5.06, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

#### **5.07 No Default**

. Neither any Loan Party nor any Subsidiary thereof (other than the Specified Insurance Subsidiaries) is in default under or with respect to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

#### **5.08 Ownership of Property; Liens**

. (a) Each of the Company and each Subsidiary (other than the Specified Insurance Subsidiaries) has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, and (b) each of the Company and each

Subsidiary (other than the Specified Insurance Subsidiaries) owns all property necessary in the operation of its business, except in each case for such defects in title or such failure to own or lease property as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The property of the Company and its Subsidiaries is subject to no Liens, other than Liens permitted by Section 7.02.

#### **5.09 Environmental Compliance**

. The Company and each of its Subsidiaries (other than the Specified Insurance Subsidiaries) has complied in all respects with all Environmental Laws except where the failure to comply could not be expected to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries (other than the Specified Insurance Subsidiaries) has received written notice of any failure so to comply except where the failure to comply could not be expected to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries (other than the Specified Insurance Subsidiaries) manages any hazardous wastes, hazardous substances, hazardous materials, toxic substances or toxic pollutants in a manner that violates any regulations promulgated pursuant to Environmental Laws except for any such violation that could not be expected to have a Material Adverse Effect.

#### **5.10 Insurance**

. The properties of the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries) are insured with financially sound and reputable insurance companies not Affiliates of the Company, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Company or the applicable Subsidiary operates.

#### **5.11 Taxes**

. The Company and its Subsidiaries (other than the Specified Insurance Subsidiaries) have filed all Federal, state and other material tax returns required to be filed, and have paid, or have made adequate provision for payment of, all Federal and material state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves or other appropriate provisions have been provided in accordance with GAAP. There is no proposed tax assessment against the Company or any Subsidiary (other than a Specified Insurance Subsidiary) that would, if made, have a Material Adverse Effect.

#### **5.12 ERISA Compliance.**

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state laws. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service or, in the case of a Pension Plan that is maintained pursuant to the adoption of a master or prototype or volume submitter document, the sponsor of such master or prototype or volume submitter document has obtained from the Internal Revenue Service a favorable opinion letter stating that the form of such master or prototype or volume submitter document is acceptable for the establishment of a tax-qualified plan under Section 401(a) of the Code. To the best knowledge of the Company, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the best knowledge of the Company, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or

violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) No ERISA Event has occurred that would reasonably be expected to result in a material liability, and neither the Company nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA event that would result in a material liability. Except to the extent the following would not reasonably be expected to have a Material Adverse Effect, (i) the Borrower and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (ii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher and neither the Company nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date; (iii) neither the Company nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (iv) neither the Company nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (v) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

(d) Neither the Company or any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan other than (A) on the Closing Date, those listed on Schedule 5.12(d) hereto and (B) thereafter, Pension Plans not otherwise prohibited by this Agreement.

### **5.13 Subsidiaries; Addresses; Equity Interests**

. As of the Closing Date, the Company has no Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13, and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, and, to the extent applicable, are fully paid and nonassessable, and are owned by a Loan Party in the percentages specified on Part (a) of Schedule 5.13 free and clear of all Liens (except for Liens permitted by Section 7.02(a), (c) or (d), and transfer restrictions contained in the Franchise Agreements and the Framework Agreements). As of the Closing Date, the addresses set forth in Schedule 5.13 are each Loan Party's place of business and each Loan Party is formed or incorporated only in the state shown for it on Schedule 5.13 hereto.

### **5.14 Margin Regulations; Investment Company Act.**

(a) Neither the Company nor any Vehicle Borrower is engaged or will engage, principally or as one of its important activities (other than in connection with Restricted Payments constituting share repurchases permitted pursuant to Section 7.10(a)(i)-(iii) or (vii)), in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) None of the Company, any Person Controlling the Company, or any Subsidiary is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

### **5.15 Disclosure**

(a) Neither this Agreement, the other Loan Documents, nor any other document delivered by or with the knowledge and consent of the Company on behalf of the Company or any Subsidiary in connection with the transactions contemplated hereby and the negotiation of this Agreement or in connection with any Loan Document or included therein contained or contains when furnished any material misstatement of fact or omitted or omits to state any fact necessary to make the statements

therein, in the light of the circumstances under which they were made, not materially misleading; provided that, with respect to projected financial information, the Borrowers represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time prepared, it being understood that projections by their nature are uncertain and no assurance is given that the results reflected in such projections will be achieved.

(b) As of the Closing Date, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects.

#### **5.16 Compliance with Laws**

. Each of the Company and each Subsidiary thereof (other than the Specified Insurance Subsidiaries) is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

#### **5.17 Intellectual Property; Licenses, Etc**

. The Company and its Subsidiaries (other than the Specified Insurance Subsidiaries) own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, "IP Rights") that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person, except to the extent such conflict would not reasonably be expected to result in a Material Adverse Effect. No slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by the Company or any Subsidiary infringes upon any rights held by any other Person in a manner that would reasonably be expected to result in a Material Adverse Effect.

#### **5.18 Location of Vehicles and Books and Records**

. As of the Closing Date, the locations (and addresses) set forth in Schedule 5.18 are all the locations at which the Company and its Subsidiaries keep the Vehicles held as inventory, except for times when such Vehicles may, in the ordinary course of business, be (a) in transit between locations, (b) in transit for "dealer trades", (c) being test driven by potential customers or (d) being repaired at a repair shop, and in each such instance described in clauses (a) through (d) the Company maintains records with the location of the Vehicle and, where applicable, the name of, and such other relevant information as is standard in the industry with respect to, the dealer involved in such a dealer trade (or the customer test driving such Vehicle). Each of the Company and each Subsidiary (other than the Specified Insurance Subsidiaries) maintains proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied have been made of all financial transactions and matters involving the assets and business of the Company or such Subsidiary, as the case may be.

#### **5.19 Franchise Agreements and Framework Agreements**

. As of the Closing Date, neither the Company nor any of its Subsidiaries is a party to any dealer Franchise Agreements, or any Framework Agreements, other than those listed in Schedule 5.19, which schedule shows the manufacturer and the Loan Party which is a party to each such agreement, the date such agreement was entered into and the expiration date (if any) of each such agreement. Each of the Franchise Agreements and Framework Agreements is currently in full force and effect, and as of the Closing Date no Loan Party has received any notice of termination with respect to any such agreements; and, except as disclosed on Schedule 5.19, no Loan Party is aware of any event which with notice, lapse of time, or both would allow any manufacturer which is a party to any of the Franchise Agreements or Framework Agreements to terminate any such agreements. There exists no present condition or state of facts or circumstances in regard to said Franchise Agreements or Framework Agreements, in the aggregate, which could reasonably be expected to have a Material Adverse Effect.

## **5.20 Engaged in Business of Vehicle Sales and Related Businesses**

. Neither the Company nor any other Borrower is engaged in any business in any material respect other than the business of (a) selling Vehicles and business activities that are reasonably related or incidental thereto, including, without limitation, the offering and/or selling of parts and service, including vehicle repair and maintenance services, replacement parts, and collision repair services, and finance and insurance products, including arranging vehicle financing through third parties and aftermarket products, such as extended service contracts, guaranteed asset protection insurance, prepaid maintenance, and credit life and disability insurance and (b) acquiring, owning, operating and, in some cases, selling dealerships engaged in such businesses; provided that no such insurance products described in clause (a) shall require the Company or any of its Subsidiaries to assume the risk of loss in respect of such policies.

## **5.21 Collateral**

. The provisions of each of the Security Instruments are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties, a legal, valid and enforceable perfected security interest in all right, title and interest of each applicable Loan Party in the Collateral described therein, except as otherwise permitted hereunder. For the avoidance of doubt, in no event shall the Collateral include (i) any asset of any Foreign Subsidiary or (ii) voting Equity Interests in any Foreign Subsidiary representing more than 65% of the voting Equity Interests of such Foreign Subsidiary.

## **5.22 Solvency**

. Both before and after giving effect to the Loans hereunder, the Company individually is Solvent, and the Loan Parties taken as a whole are Solvent.

## **5.23 Labor Matters**

. As of the Closing Date, to the Company's and its Subsidiaries' (other than the Specified Insurance Subsidiaries') knowledge, there are no material labor disputes to which the Company or any of its Subsidiaries (other than the Specified Insurance Subsidiaries) are or are reasonably expected to become a party, including, without limitation, any strikes, lockouts or other disputes relating to such Persons' plants and other facilities.

## **5.24 Taxpayer Identification Number**

. The Company's true and correct U.S. taxpayer identification number is set forth on Schedule 10.02.

## **5.25 OFAC**

. No Borrower, nor any of their respective Subsidiaries, nor, to the knowledge of any Borrower and their respective Subsidiaries (in each case, other than the Specified Insurance Subsidiaries), any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity currently the subject of any Sanctions or included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority, nor is any Borrower or any Subsidiary located, organized or resident in a Designated Jurisdiction.

## **5.26 Anti-Corruption Laws**

. Each Borrower and its Subsidiaries (other than the Specified Insurance Subsidiaries) have conducted their businesses in material compliance with the United States Foreign Corrupt Practices Act of 1977 and other similar anti-corruption legislation in other jurisdictions that are applicable to any Borrower or its Subsidiaries (other than the Specified Insurance Subsidiaries) (including, if applicable, the UK Bribery Act 2010), and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

## 5.27 Affected Financial Institutions

. No Loan Party is an Affected Financial Institution.

## 5.28 Covered Entities

. No Loan Party is a Covered Entity.

## ARTICLE VI. AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder (other than Obligations consisting of continuing indemnities and other contingent Obligations that, in each case, expressly survive termination of this Agreement and for which no claim has been made against any Loan Party) shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, the Company shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, and 6.03) cause each Subsidiary (other than, with respect to all covenants in this Article VI other than those contained in Section 6.07, the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary) to:

**6.01 Financial Statements.** Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent and the Required Lenders (provided that any item in clause (a) or (b) below which is filed with the SEC in accordance with SEC requirements shall be deemed to be satisfactory):

(a) as soon as available, but in any event within ninety (90) days after the end of each fiscal year of the Company (or if earlier, fifteen (15) days after the date required to be filed with the SEC (without giving effect to any extension permitted by the SEC)):

(i) an audited consolidated balance sheet of the Company and its Subsidiaries as at the end of such fiscal year, setting forth in comparative form the figures for the previous fiscal year, in reasonable detail and prepared in accordance with GAAP;

(ii) if requested by the Administrative Agent, a consolidating balance sheet of the Company and its Subsidiaries as at the end of such fiscal year, with New Vehicle and Used Vehicle inventories designated, as well as associated lien payoffs, in each case prior to intercompany eliminations (and, upon request of the Administrative Agent, setting forth in comparative form the figures for the previous fiscal year), all in reasonable detail and prepared in accordance with GAAP, and accompanied by a combined balance sheet of the Subsidiaries that operate Ford or Lincoln dealerships as at the end of such fiscal year (and upon request of the Administrative Agent, setting forth in comparative form the figures for the previous fiscal year);

(iii) the related audited consolidated statement of income or operations for such fiscal year setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP;

(iv) if requested by the Administrative Agent, the related consolidating statements of income or operations for such fiscal year (and, upon request of the Administrative Agent, setting forth in comparative form the figures for the previous fiscal year), all in reasonable detail and prepared in accordance with GAAP, and accompanied by combined statements of income and operations of the Subsidiaries that operate Ford or Lincoln dealerships for such fiscal year (and upon request of the Administrative Agent, setting forth in comparative form the figures for the previous fiscal year); and

(v) the related audited consolidated statements of stockholders' equity and cash flows for such fiscal year setting forth in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP;

such consolidated financial statements to be audited and accompanied by (x) a report and opinion of Ernst & Young LLP or any other Registered Public Accounting Firm of nationally recognized standing reasonably acceptable to the Required Lenders, which report and opinion shall be prepared in accordance with audit standards of the Public Company Accounting Oversight Board and applicable Securities Laws and shall not be subject to any “going concern” or like qualification or exception (other than a “going concern” statement, explanatory note or like qualification or exception resulting solely from the Maturity Date under this Agreement occurring within one year from the time such opinion is delivered) or any qualification or exception as to the scope of such audit;

(b) as soon as available, but in any event within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of the Company (or if earlier, five days after the date required to be filed with the SEC (without giving effect to any extension permitted by the SEC)):

(i) an unaudited consolidated balance sheet of the Company and its Subsidiaries as at the end of such fiscal quarter, setting forth in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year, in reasonable detail and prepared in accordance with GAAP;

(ii) if requested by the Administrative Agent, a consolidating balance sheet of the Company and its Subsidiaries as at the end of such fiscal quarter, with New Vehicle and Used Vehicle inventories designated, as well as associated lien payoffs, in each case prior to intercompany eliminations (and, upon the request of the Administrative Agent, setting forth in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year), all in reasonable detail and prepared in accordance with GAAP, and accompanied by a combined balance sheet of the Subsidiaries that operate Ford or Lincoln dealerships as at the end of such fiscal quarter (and upon request of the Administrative Agent, setting forth in comparative form the figures for the previous fiscal quarter);

(iii) the related unaudited consolidated statement of income or operations for the portion of the Company’s fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding portion of the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP;

(iv) if requested by the Administrative Agent, the related consolidating statements of income or operations for the portion of the Company’s fiscal year then ended (and, upon the request of the Administrative Agent, setting forth in comparative form the figures for the corresponding portion of the previous fiscal year), all in reasonable detail and prepared in accordance with GAAP, and accompanied by combined statements of income and operations of the Subsidiaries that operate Ford or Lincoln dealerships for such portion of the fiscal year then ended (and upon request of the Administrative Agent, setting forth in comparative form the figures for the corresponding portion of the previous fiscal year); and

(v) the related unaudited consolidated statements of stockholders’ equity and cash flows for such fiscal quarter (and the portion of the Company’s fiscal year then ended) setting forth in comparative form the figures for the corresponding fiscal quarter (and portion) of the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP;

such consolidated and consolidating financial statements described in this [Section 6.01\(b\)](#) to be unaudited and certified by a Responsible Officer of the Company as fairly presenting the financial condition, results of operations, shareholders’ equity and cash flows of the Company and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(c) if requested by the Administrative Agent, as soon as available, but in any event within twenty (20) days after the end of each fiscal quarter (including the fourth quarter of each fiscal year) of the Company quarterly factory form financial statements for each Vehicle Borrower;

As to any information contained in materials furnished pursuant to Section 6.02(f), the Company shall not be separately required to furnish such information under clause (a) or (b) above, but the foregoing shall not be in derogation of the obligation of the Company to furnish the information and materials described in clauses (a) and (b) above at the times specified therein.

**6.02 Certificates; Other Information.** Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent:

(a) Concurrently with:

(i) the delivery of the financial statements referred to in Section 6.01(a) and (b), (A) a duly completed Compliance Certificate signed by a Responsible Officer of the Company, including the calculation of the financial covenants set forth in Section 7.11(a) and (b), along with calculations of Restricted Payment availability and usage and the Consolidated Total Leverage Ratio in form and substance reasonably acceptable to the Administrative Agent, (B) a schedule (which such schedule may be included in the Compliance Certificate delivered with respect to such period) describing the entry of any final, non-appealable judgment or decree against the Company and/or any of its Subsidiaries if the aggregate amount of such judgment or decree exceeds \$7,500,000 (after deducting the amount with respect to which the Company or such Subsidiary is insured and with respect to which the insurer has assumed the defense in writing and has not contested or denied its responsibility for such amount) and (C) a duly completed Revolving Borrowing Base Certificate signed by a Responsible Officer of the Company as at the end of the respective fiscal quarter or fiscal year, provided that, if any Event of Default shall have occurred and be continuing, the Company shall deliver such Revolving Borrowing Base Certificates, each signed by a Responsible Officer of the Company, at any other time requested by the Administrative Agent;

(ii) the delivery of the financial statements referred to in Section 6.01(a), financial projections for the 12 months succeeding the date of such financial statements, such projections to be prepared by management of the Company, in form reasonably satisfactory to the Administrative Agent; and

(iii) any event described herein requiring Pro Forma Compliance, to the extent otherwise required under Section 7.04, 7.16 or 7.19, a duly completed Pro Forma Compliance Certificate (including the calculation of the financial covenants set forth in Section 7.11(a) and (b)), Pro Forma Revolving Borrowing Base Certificate, or Pro Forma Used Vehicle Floorplan Borrowing Base Certificate, as applicable, signed by a Responsible Officer of the Company;

In addition to other reporting requirements under this Agreement, if calculation of any financial ratio gives pro forma effect to any Material Disposition or Material Acquisition occurring during the relevant period or after the relevant period and on or prior to the date of determination, as described above and if (Y) the aggregate adjustment to Consolidated EBITDAR (as a result of all Material Dispositions and Material Acquisitions) either increases or decreases Consolidated EBITDAR for such period by at least 10% or (Z) the Administrative Agent requests such additional reporting, then (in the case of either clause (Y) or (Z)), the Company will provide additional financial reporting and compliance reporting segregating actual financial line items from pro forma line items for such period in a manner reasonably acceptable to the Administrative Agent.

(b) within twenty (20) days after the end of each calendar month, a duly completed Used Vehicle Floorplan Borrowing Base Certificate signed by a Responsible Officer of the Company as at the end of such calendar month; provided that, if any Event of Default shall have occurred and be continuing, the Company shall deliver such Used Vehicle Floorplan Borrowing Base Certificates, each signed by a Responsible Officer of the Company, at any other time requested by the Administrative Agent;

(c) promptly upon the reasonable request of the Administrative Agent from time, receivables ageing reports and inventory and equipment listings, in either consolidated or consolidating format,



including a detailed list of each Used Vehicle constituting Eligible Used Vehicle Inventory, stating the make, model, year and book value of each such Vehicle;

(d) in the event of any Acquisition, the certificates and information required by Section 7.19;

(e) within a reasonable period of time after any reasonable request by the Administrative Agent, Vehicle Title Documentation and manufacturer/dealer statements;

(f) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Company, and copies of all annual, regular, periodic and special reports and registration statements which the Company may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(g) promptly, and in any event within five Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each material notice or other material correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof;

(h) [reserved];

(i) in the event of any casualty loss or condemnation suffered by any Loan Party that has the effect of reducing either the Revolving Borrowing Base or the Used Vehicle Floorplan Borrowing Base by more than \$35,000,000, an updated Revolving Borrowing Base Certificate or Used Vehicle Floorplan Borrowing Base Certificate, as applicable, reflecting such casualty loss or condemnation;

(j) in the event any real property is added to or removed from the Revolving Borrowing Base, an updated Revolving Borrowing Base Certificate reflecting such addition or removal, as applicable;

(k) promptly following any request therefor, provide information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money-laundering rules and regulations, including the PATRIOT Act and the Beneficial Ownership Regulation; and

(l) promptly, such additional information regarding the business, financial or corporate affairs of the Company or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01(a), (b) or (c) or Section 6.02(f) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Company posts such documents, or provides a link thereto on the Company's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Company's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that, the Company shall notify the Administrative Agent and each Lender (by facsimile or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Company with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Company hereby acknowledges that (a) the Administrative Agent and/or the Arranger will make available to the Lenders materials and/or information provided by or on behalf of the Company

hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks, SyndTrak, ClearPar or another similar electronic system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Company or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Company hereby agrees that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC", the Company shall be deemed to have authorized the Administrative Agent, the Arranger, and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Company or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information"; and (z) the Administrative Agent and the Arranger shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information".

**6.03 Notices.** Promptly following any Responsible Officer of the Company having notice or knowledge thereof, notify the Administrative Agent and each Lender:

- (a) of the occurrence of any Default;
- (b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including (i) breach or non-performance of, or any default under, a Contractual Obligation of the Company or any Subsidiary that has resulted or could reasonably be expected to result in a Material Adverse Effect; (ii) any dispute, litigation, investigation, proceeding or suspension between the Company or any Subsidiary and any Governmental Authority which dispute, litigation, investigation, proceeding or suspension arising under this clause (ii) has resulted or could reasonably be expected to result in a Material Adverse Effect; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting the Company or any Subsidiary, including pursuant to any applicable Environmental Laws, where the result of such event arising under this clause (iii) has resulted or could reasonably be expected to result in a Material Adverse Effect;
- (c) of the occurrence of any ERISA Event;
- (d) of any material change in accounting policies or financial reporting practices by the Company or any Subsidiary;
- (e) of the incurrence by the Company or any Subsidiary of any Indebtedness (other than the Obligations) having a principal amount in excess of \$50,000,000;
- (f) of any sale of Equity Interests of the Company or any Subsidiary to any Person that is not a Loan Party;
- (g) of any Disposition by the Company or any Subsidiary of any dealership, Franchise Agreement or Framework Agreement to the extent required by Section 7.04;
- (h) of (i) any Franchise Agreement entered into after the Closing Date (and a copy of such Franchise Agreement) which deviates in any material respect from the Franchise Agreements for the applicable vehicle manufacturer or distributor delivered on or prior to the Closing Date, (ii) any Framework Agreement (and a copy of such Framework Agreement) entered into after the Closing Date (including the subject matter and term of such Framework Agreement), (iii) the termination or expiration of any Franchise Agreement or Framework Agreement, including the expiration of a Franchise Agreement which has expired as described in Section 8.01(1) and has not been renewed within 30 days; (iv) any material amendment or other modification (and a copy of such amendment or modification) of any Framework Agreement, and (v) any material adverse change in the relationship between the

Company or any Subsidiary and any vehicle manufacturer or distributor, including the written threat of loss of a new vehicle franchise or the written threat of termination of a Franchise Agreement or Framework Agreement; and

(i) of the occurrence of any Disposition by the Company or any Subsidiary to the extent required pursuant to Section 7.04;

Each notice pursuant to this Section 6.03 shall be accompanied by a statement of a Responsible Officer of the Company setting forth details of the occurrence referred to therein and, if applicable, stating what action the Company has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

**6.04 Payment of Obligations.** Pay and discharge and cause each of its Subsidiaries to pay and discharge, when due, (i) all Federal and material state income or property taxes, and all other material taxes, assessments and governmental charges or levies imposed upon the Company or such Subsidiary, as the case may be, and (ii) all lawful claims for labor, materials and supplies to the extent the failure to pay or discharge such claims for labor, materials and supplies would reasonably be expected to have a Material Adverse Effect, unless and only to the extent, in the case of each of clauses (i) and (ii) above, that the Company or such Subsidiary, as the case may be, is contesting such taxes, assessments and governmental charges, levies or claims in good faith and by appropriate proceedings and the Company or such Subsidiary has set aside on its books such reserves or other appropriate provisions therefor as may be required by GAAP.

**6.05 Preservation of Existence, Etc.; Maintenance of Vehicle Title Documentation.** (a) Except for any Unrestricted Subsidiary, preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.03 or 7.04; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect; and (d) if applicable, preserve and maintain, in accordance with its standard policies and procedures, all manufacturer statements of origin, certificates of origin, certificates of title or ownership and other customary vehicle title documentation (collectively, the "Vehicle Title Documentation") necessary or desirable in the normal conduct of its business and maintain records evidencing which Vehicles are being used as Demonstrators and Rental Vehicles.

**6.06 Maintenance of Properties.** (a) Maintain, preserve and protect all of its properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) use the standard of care typical in the industry in the operation and maintenance of its facilities.

**6.07 Maintenance of Insurance.** Maintain with financially sound and reputable insurance companies (including any Captive Insurance Company, in accordance with the terms and conditions of this Agreement), insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons and such endorsements as are reasonably acceptable to the Administrative Agent. The Company and its Subsidiaries will, and will cause each Captive Insurance Company and each Specified Insurance Subsidiary to, preserve and maintain: (i) the licensing and certification of each Captive Insurance Company or Specified Insurance Subsidiary, as applicable, pursuant to all applicable insurance and warranty laws and regulations; (ii) all certifications and authorizations necessary to ensure that each Captive Insurance Company is eligible for all reimbursements available under all applicable insurance and service contract laws and regulations; and (iii) all material licenses, permits, authorizations and qualifications required under all applicable insurance and service contract laws and regulations in

connection with the existence and operation of each Captive Insurance Company and each Specified Insurance Subsidiary. If requested by the Administrative Agent, Borrowers will provide to the Administrative Agent such audited statements such Captive Insurance Company and such Specified Insurance Subsidiary as requested by the Administrative Agent as of the end of each fiscal year within the sooner to occur of: (i) five days following filing with the applicable regulatory agencies; or (ii) 180 days following the end of such fiscal year. Each Captive Insurance Company and each Specified Insurance Subsidiary shall conduct its insurance business in material compliance with all applicable laws and using sound actuarial principles. The insurance premiums and other expenses charged by any Captive Insurance Company to the Company and its Subsidiaries shall be reasonable and customary and in accordance with all applicable insurance and service contract laws and regulations. The insurance premiums and other fees charged by any Specified Insurance Company to the customers of the Vehicle Borrowers shall be in accordance with all applicable insurance and service contract laws and regulations. If requested by the Administrative Agent, the Company and its Subsidiaries will provide the Administrative Agent copies of any outside actuarial reports prepared with respect to any projection, valuation or appraisal of any Captive Insurance Company or any Specified Insurance Company promptly.

**6.08 Compliance with Laws and Material Contractual Obligations.** Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees and all Contractual Obligations applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply with such requirement of Law, order, writ, injunction, decree or contractual obligation could not reasonably be expected to have a Material Adverse Effect.

**6.09 Books and Records.** Maintain proper books of record and account, in which full, true and correct in all material respects entries in conformity with GAAP consistently applied shall be made of all material financial transactions and material matters involving the assets and business of the Company or such Subsidiary, as the case may be, including, if applicable, books and records specifying the year, make, model, cost, price, location and vehicle identification number of each Vehicle owned by the Company or such Subsidiary.

**6.10 Inspection Rights.** Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties (including inspecting Vehicles and conducting random samples of the Net Book Value of the Used Vehicles and any assets included in the Revolving Borrowing Base), to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Company (except for access required in connection with a floorplan audit pursuant to Section 6.12, which will be permitted at any time during regular business hours (or at other times consistent with standard industry practice) and without advance notice); provided, however, that (a) without limiting amounts that may be owed under the Fee Letter or Section 6.12 below, while no Event of Default exists the Borrowers shall be responsible for expenses associated with only one such visit or inspection by the Administrative Agent and its contractors per calendar year, and (b) when an Event of Default exists the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at any time or times (all at the expense of the Borrowers) during normal business hours and without advance notice.

**6.11 Use of Proceeds.** Use the proceeds of the Borrowings:

(a) in the case of the Revolving Credit Facility (i) to continue indebtedness outstanding under the revolving credit facility of the Existing Credit Agreement, and (ii) for Permitted Acquisitions, other working capital, capital expenditures and other lawful corporate purposes, in each case not in contravention of any Law or of any Loan Document;

(b) in the case of the New Vehicle Floorplan Facility (i) to finance the acquisition by the New Vehicle Borrowers of New Vehicle Inventory (including dealer trade, Demonstrators, Rental Vehicles and Fleet Vehicles) pursuant to New Vehicle Floorplan Committed Loan Notices, New Vehicle

Floorplan Swing Line Loan Notices, Payment Commitments, Payoff Letter Commitments or electronic requests via the Floorplan On-Line System, and (ii) to refinance indebtedness outstanding under existing new vehicle floorplan facilities of the New Vehicle Borrowers, provided pursuant to the Existing Credit Agreement, in each case not in contravention of any Law or any Loan Document; and

(c) in the case of the Used Vehicle Floorplan Facility (i) to finance the acquisition of Used Vehicle inventory, (ii) to continue indebtedness outstanding under the used vehicle floorplan facility of the Used Vehicle Borrowers, provided pursuant to the Existing Credit Agreement, and (iii) other working capital, capital expenditures and other lawful corporate purposes (including Permitted Acquisitions), in each case not in contravention of any Law or of any Loan Document;

provided that no Credit Extension shall be advanced by any Lender directly to any Unrestricted Subsidiary; provided, further, that the foregoing proviso shall not be construed to prohibit Investments expressly permitted by Section 7.05.

#### **6.12 Floorplan Audits.**

(a) Entry on Premises. Each New Vehicle Borrower shall permit a duly authorized representative of the New Vehicle Floorplan Swing Line Lender to enter upon such New Vehicle Borrower's premises during regular business hours (or at other times consistent with standard industry practice) to perform audits of Vehicles constituting Collateral in a manner reasonably satisfactory to the New Vehicle Floorplan Swing Line Lender on a quarterly basis or at other intervals as required by the New Vehicle Floorplan Swing Line Lender from time to time, but no less frequently than three times in any twelve (12) month period. Each New Vehicle Borrower shall assist the New Vehicle Floorplan Swing Line Lender, and its representatives, in whatever way reasonably necessary to make the inspections and audits provided for herein. The Borrowers (jointly and severally) shall reimburse the Administrative Agent for any floorplan audits if an out-of-trust situation or Event of Default has occurred, and the Borrowers shall continue to reimburse the Administrative Agent for such floorplan audits until such time as (i) consecutive floorplan audits demonstrate no out-of-trust situation and (ii) no Event of Default has occurred and is continuing.

(b) Delivery of Audit Results. Within thirty (30) days after the end of each calendar month of the Company, the New Vehicle Floorplan Swing Line Lender shall deliver to the Administrative Agent a summary of the audit results of each of the New Vehicle Borrowers performed by the New Vehicle Floorplan Swing Line Lender during the calendar month just ended, setting forth therein a spread sheet reflecting, for each New Vehicle Borrower, a summary of the results of each floorplan audit during the calendar month. The Administrative Agent shall promptly deliver a copy of such report to each Lender.

**6.13 Location of Vehicles.** Keep the Vehicles only at the locations set forth on Schedule 5.18, as such schedule may be revised from time to time as set forth in the Compliance Certificate delivered pursuant to Section 6.02(a), except that Vehicles may, in the ordinary course of business, be (a) in transit between locations, (b) in transit for "dealer trades", (c) being test driven by potential customers or (d) being repaired at a collision repair center, and in each such instance described in clauses (a) – (d), the Company shall maintain records with the location of the Vehicle and, where applicable, the name of, and such other relevant information as is standard in the industry with respect to, the dealer involved in such a dealer trade (or the customer test driving such Vehicle), and shall provide any such records to the Administrative Agent promptly upon the Administrative Agent's request therefor.

**6.14 Additional Subsidiaries.** As soon as practicable (but in any event within ten (10) days in the case of any Restricted Subsidiary that owns or operates a dealership, and thirty (30) days in the case of any other Restricted Subsidiary (or, in either such case, such longer period as the Administrative Agent may agree in its sole discretion) after the acquisition, creation or designation of any Restricted Subsidiary that is a Domestic Subsidiary, including the creation of any such Person pursuant to a Division (or the date a Subsidiary otherwise qualifies as a Restricted Subsidiary that is a Domestic Subsidiary), cause to be delivered to the Administrative Agent each of the following:

(a) a Joinder Agreement duly executed by such Restricted Subsidiary with all schedules and information thereto appropriately completed with respect to (i) such Restricted Subsidiary (A) becoming a “Used Vehicle Borrower” and a “Subsidiary Guarantor”, if such Restricted Subsidiary owns or operates a dealership, (B) becoming a “New Vehicle Borrower” and a “Subsidiary Guarantor”, if such Restricted Subsidiary is a Specified Subsidiary, and (C) becoming a “Subsidiary Guarantor”, if such Restricted Subsidiary does not own or operate a dealership, ~~(ii) such Restricted Subsidiary becoming a party to the New Vehicle Floorplan Offset Agreement if such Restricted Subsidiary is a Specified Subsidiary,~~ and ~~(iii)~~ the Equity Interests of such Restricted Subsidiary becoming pledged pursuant to the Pledge Agreement or escrowed pursuant to the Escrow and Security Agreement, as the case may be;

(b) [reserved];

~~(b) [Reserved];~~

(c) UCC financing statements naming such Subsidiary as “Debtor” and naming the Revolving Administrative Agent for the benefit of the Secured Parties as “Secured Party,” in form, substance and number sufficient in the reasonable opinion of the Administrative Agent and its counsel to be filed in all UCC filing offices in which filing is necessary or advisable to perfect in favor of the Revolving Administrative Agent for the benefit of the Secured Parties the Liens on the Collateral conferred under such Joinder Agreement and other Security Instruments to the extent such Lien may be perfected by UCC filings;

(d) unless the Administrative Agent expressly waives such requirement in accordance with Section 10.01, in the case of any single Acquisition or any related series of Acquisitions with an aggregate Cost of Acquisition in excess of the lesser of (i) \$75,000,000 and (ii) an amount that results in an increase or decrease in the aggregate of the Revolving Borrowing Base or the Used Vehicle Floorplan Borrowing Base of more than ten percent (10%), an opinion or opinions of counsel to such Restricted Subsidiary dated as of the date of delivery of such Joinder Agreements (and other Loan Documents) provided for in this Section 6.14 and addressed to the Administrative Agent, in form and substance acceptable to the Administrative Agent;

(e) the documents described in Sections 4.01(a)(iii), (iv), (vii), (xiii), (xiv) and (xxiv) with respect to such Restricted Subsidiary;

(f) evidence satisfactory to the Administrative Agent that, within 3 Business Days of demand therefor by the Administrative Agent, all taxes, filing fees, recording fees related to the perfection of the Liens securing the Obligations have been paid and all reasonable costs and expenses of the Administrative Agent in connection therewith have been paid.

**6.15 Further Assurances.** Execute, acknowledge, deliver, and record or file such further instruments, including, without limitation, further security agreements, financing statements, and continuation statements, and do such further acts as may be reasonably necessary, desirable, or proper to carry out more effectively the purposes of this Agreement, including, without limitation, (i) causing any additions, substitutions, replacements, or equipment related to the Vehicles financed hereunder to be covered by and subject to the Liens created in the Loan Documents to which any Vehicle Borrower is a party; and (ii) with respect to any Vehicles which are, or are required to be, subject to Liens under the Loan Documents, execute, acknowledge, endorse, deliver, procure, and record or file any document or instrument, including, without limitation, any financing statement or, if an Event of Default has occurred and is continuing, any Vehicle Title Documentation, deemed advisable by the Administrative Agent or the New Vehicle Floorplan Swing Line Lender to protect the Liens granted in this Agreement or the Loan Documents against the rights or interests of third Persons, and the Company will pay all reasonable costs connected with any of the foregoing.

**6.16 Landlord Waivers.** With respect to any real property leased by the Company or any Loan Party from a Person that is not a Loan Party, the Company and each Loan Party shall deliver to the Administrative Agent Landlord Waivers duly executed by the applicable landlord in form and substance reasonably satisfactory to the Administrative Agent and in sufficient quantity so that the Administrative

Agent shall have satisfactory access to Collateral located in at least seventy percent (70%) of the aggregate owned and leased dealer locations of the Company and its Subsidiaries (it being acknowledged and agreed by the Administrative Agent and the Lenders that the Administrative Agent has satisfactory access to Collateral located at dealer locations owned by a Loan Party which has entered into the Security Agreement (including pursuant to a Joinder Agreement)); provided that if the addition of a Subsidiary as contemplated by Section 6.14 causes the Company and each Loan Party to cease to satisfy the seventy percent (70%) requirement described above, the Company and each Loan Party shall, within ninety (90) days from the addition of such Subsidiary, deliver additional Landlord Waivers necessary to satisfy the seventy percent (70%) requirement.

**6.17 Demonstrator, Rental Vehicle or Other Mileaged New Vehicle.** With respect to any Vehicle used by the Company or any Subsidiary as a Demonstrator, Rental Vehicle or other mileaged New Vehicle, the Company or such Subsidiary shall designate such Vehicle in its books and records as a Demonstrator, Rental Vehicle or other mileaged New Vehicle, as the case may be, and indicate in such books and records when such Vehicle was Deemed To Be A Mileage Vehicle.

**6.18 Anti-Corruption Laws.** Conduct its businesses in material compliance with the United States Foreign Corrupt Practices Act of 1977 and other similar anti-corruption legislation in other jurisdictions that are applicable to any Borrower or its Subsidiaries (including, if applicable, the UK Bribery Act 2010), and maintain policies and procedures designed to promote and achieve compliance with such laws.

## ARTICLE VII. NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder (other than Obligations consisting of continuing indemnities and other contingent Obligations that, in each case, expressly survive termination of this Agreement and for which no claim has been made against any Loan Party) shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, the Company shall not, nor shall it permit any Subsidiary (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary) to, directly or indirectly:

**7.01 Indebtedness.** Incur, create, assume or suffer to exist any Indebtedness, except:

- (a) the Obligations under this Agreement and the other Loan Documents;
- (b) Indebtedness of the Company or any Subsidiary existing at the Closing Date which is reflected in Schedule 7.01(b) hereto;
- (c) Indebtedness created under leases which, in accordance with GAAP, have been recorded and/or should have been recorded on the books of the applicable Borrower as capital leases;
- (d) unsecured Subordinated Indebtedness;
- (e) accounts payable (for the deferred purchase price of property or services) which are from time to time incurred in the ordinary course of business and which (i) are not in excess of (A) ninety (90) days past the due date or (B) if such account payable has no due date, one hundred twenty (120) days past the invoice or billing date or (ii) if outstanding for more than ninety (90) days past such due date (or one hundred twenty (120) days past such invoice or billing date, as applicable), as to which a good faith dispute exists and adequate reserves in conformity with GAAP have been established on the books of such Person;
- (f) Permitted Real Estate Debt and Guarantees by the Company or any Subsidiary that is a Loan Party;
- (g) Indebtedness (other than floorplan Indebtedness) of any Subsidiary of the Company in existence (but not incurred or created in connection with an acquisition) on the date on which such Subsidiary is acquired by any Loan Party pursuant to a Permitted Acquisition, provided (i) neither the

Company nor any of its other Subsidiaries has any obligation with respect to such Indebtedness, (ii) none of the properties of the Company or any of its other Subsidiaries is bound with respect to such Indebtedness, and (iii) the Company is in full compliance with Section 7.11 hereof before and after such acquisition;

(h) Indebtedness (other than floorplan Indebtedness) secured by Liens upon any property hereafter acquired by the Company or any of its Subsidiaries which Indebtedness is in existence on the date of a Permitted Acquisition (but not incurred or created in connection with such acquisition) at a time when the Company is in full compliance with Section 7.11 hereof before and after such Permitted Acquisition, which Indebtedness is assumed by such acquiring Person simultaneously with such acquisition, which Liens extend only to such property so acquired (and not to any after-acquired property) and with respect to which Indebtedness neither the Company nor any of its Subsidiaries (other than the acquiring Person and its Subsidiaries) has any obligation;

(i) contingent obligations (including Guarantees) of any Indebtedness permitted hereunder;

(j) Indebtedness in respect of obligations (contingent or otherwise) of the Company or any Subsidiary existing or arising under any Swap Contract, provided that (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks or managing costs associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person, and not for purposes of speculation; and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(k) Indebtedness that renews, refinances, refunds or extends any then-existing Indebtedness (other than Permitted FMCC Floorplan Indebtedness or Permitted Service Loaner Indebtedness) of any Loan Party, so long as (A) such renewal, refinancing, refunding or extension does not in any material respect increase the principal amount thereof or expand or add any property subject to any Lien (unless otherwise permitted under this Agreement), (B) if the Indebtedness being refinanced is Subordinated Indebtedness, then such refinancing Indebtedness must also be Subordinated Indebtedness, (C) such renewal, refinancing, refunding, or extension has a final maturity date equal to or greater than the final maturity of, and has a weighted average life to maturity equal to or greater than the weighted average life to maturity of, the Indebtedness being renewed, refinanced, refunded or extended, and (D) without limitation of any other provision herein (including Section 7.16), the terms and conditions (including, without limitation, terms and conditions relating to repurchase, redemption, prepayment and defeasance requirements) of such renewal, refinancing, refunding or extension are not materially more restrictive or burdensome than the Indebtedness being renewed, refinanced, refunded or extended);

(l) Indebtedness of any Loan Party secured by Liens upon property (other than Inventory, property acquired using purchase-money Indebtedness with respect to that property provided by Lenders pursuant to this Agreement, or any property included in the Revolving Borrowing Base) which Liens extend only to such property, with respect to which Indebtedness none of the Subsidiaries other than the owner of such encumbered asset has any obligation;

(m) unsecured Indebtedness of the Company and Guarantees of such Indebtedness by Subsidiary Guarantors; provided that (A) the Company and its Subsidiaries shall be in Pro Forma Compliance after giving effect to the incurrence of any such Indebtedness, and (B) not more than \$75,000,000 of such aggregate amount may have a maturity prior to the then applicable Maturity Date at the time of such incurrence;

(n) Indebtedness consisting of Guarantees by the Company or any of its Subsidiaries in favor of any Person of retail installment contracts or other retail payment obligations in respect of Vehicles sold to a customer; provided that the sum of (A) the aggregate face amount of such guaranteed retail installment contracts and other retail payment obligations described in this Section 7.01(n), plus (B) the aggregate amount of Investments (on a gross basis excluding any reserves) permitted under Section 7.05(j) shall not exceed \$35,000,000 at any time;



(o) Obligations in respect of surety or other bonds or similar instruments entered into in the ordinary course of business; provided that, the aggregate amount of such Indebtedness shall not exceed \$15,000,000 at any time;

(p) Unsecured Indebtedness owed by any Subsidiary Guarantor to the Company or to another Subsidiary Guarantor;

(q) Indebtedness of any Borrower created under a Qualified Service Loaner Program;

(r) Permitted FMCC Floorplan Indebtedness; and

(s) Indebtedness of the Company under a bridge loan facility with a maturity that is 364 days or less from the date of the incurrence of such Indebtedness.

**7.02 Liens.** Incur, create, assume or permit to exist any Lien on any of its property or assets, whether owned at the date hereof or hereafter acquired, except:

(a) Liens securing payment of the Obligations;

(b) Liens of the lessor on the property leased pursuant to a lease permitted by Section 7.01(c);

(c) Liens on property (other than Inventory, property acquired using purchase-money Indebtedness with respect to that property provided by Lenders pursuant to this Agreement, or any property included in the Revolving Borrowing Base), which Liens secure Indebtedness permitted by Section 7.01(l);

(d) Liens on real property, fixtures, related real property rights and related contracts, and proceeds of the foregoing (including, without limitation, insurance proceeds in respect of the foregoing) owned by such Loan Party (in each case, other than property included in the Revolving Borrowing Base), securing Permitted Real Estate Debt;

(e) extensions, renewals and replacements of Liens referred to in Section 7.02(a), (b), (c), (d), and (g), provided, that any such extension, renewal or replacement Lien shall be limited to the property or assets covered by the Lien being extended, renewed or replaced and that the Indebtedness secured by any such extension, renewal or replacement lien shall be in an amount not greater than (i) the amount of the Indebtedness secured by the original Lien extended, renewed or replaced, plus (ii) any closing fees, prepayment premiums and reasonable closing costs related to such extension, renewal or replacement;

(f) Liens (including, without limitation, certain rights of set-off and title retention agreements) in favor of a Manufacturer securing amounts owing in connection with Inventory purchased from such Manufacturer, so long as such Liens do not secure Indebtedness, other than (i) Indebtedness of the type described in clause (e) of the definition of "Indebtedness" (and which Indebtedness does not satisfy the requirements of clause (a), (b), (c), (d), (f), (g) or (h) of such definition) and (ii) Guarantees of Indebtedness described in clause (i) above;

(g) Liens on property (other than Inventory, property acquired using purchase-money Indebtedness with respect to that property provided by Lenders pursuant to this Agreement, or any property included in the Revolving Borrowing Base) related to other Indebtedness permitted under Section 7.01(g), or (h);

(h) Liens on property (including real property) other than the Collateral or property included in the Revolving Borrowing Base, provided which Liens secure Swap Contracts permitted under Section 7.01(j);

(i) Liens securing Permitted Service Loaner Indebtedness (which Liens extend only to Rental Vehicles financed by such Permitted Service Loaner Indebtedness and proceeds of such Vehicles);

(j) Liens securing Permitted FMCC Floorplan Indebtedness permitted by Section 7.01(r);

(k) Liens for Taxes not past due for more than thirty (30) days or Taxes being contested in good faith and by appropriate proceedings diligently conducted, and as to which reserves or other appropriate provisions as may be required by GAAP are being maintained;

(l) carriers', warehousemen's, mechanics', materialmen's, landlord's and other like statutory or contractual Liens arising in the ordinary course of business securing obligations which are not overdue for a period of more than thirty (30) days or which are being contested in good faith and by appropriate proceedings, diligently conducted, and as to which such reserves or other appropriate provisions as may be required by GAAP are being maintained;

(m) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation;

(n) deposits to secure the performance of bids, trade contracts, statutory obligations, and other obligations of a like nature incurred in the ordinary course of business;

(o) zoning, easements and other restrictions on the use of real property that do not, in the aggregate, materially impair the use of such property;

(p) Liens in existence on the date hereof and listed on Schedule 7.02;

(q) purchase options and rights of first refusal in favor of a Manufacturer arising under a Framework Agreement or a Franchise Agreement or the documents executed and delivered in connection therewith;

(r) Liens on real property, fixtures, related real property rights and related contracts, and proceeds of the foregoing (including, without limitation, insurance proceeds in respect of the foregoing) owned by such Loan Party (in each case, other than property included in the Revolving Borrowing Base), securing Indebtedness permitted by Section 7.01(s); and

(s) Liens not otherwise permitted hereby securing permitted Indebtedness of the Company and its Subsidiaries so long as, after giving effect to such Indebtedness, the aggregate principal amount of Indebtedness secured by such Liens does not exceed \$35,000,000 at any time.

**7.03 Consolidations and Mergers.** Merge, consolidate with or into, or convey, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person (including, in each case, pursuant to a Division), except:

(a) any of its Subsidiaries may merge with the Company, provided that the Company shall be the continuing or surviving Person, or with any one or more such Subsidiaries, provided that (i) if any such transaction shall be between Subsidiaries, one of which is a wholly-owned Subsidiary and one of which is not a wholly-owned Subsidiary, the wholly-owned Subsidiary shall be the continuing or surviving Person, and (ii) in any such transaction between any Subsidiary that is a Subsidiary Guarantor and an entity that is not the Company or a Subsidiary Guarantor, the surviving entity shall be a Subsidiary Guarantor;

(b) any Subsidiary of the Company may sell or transfer all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Company or a wholly-owned Subsidiary; provided, that (i) any such sale or transfer by a Subsidiary Guarantor shall be to the Company or a Subsidiary Guarantor and (ii) if the buyer or transferee of such assets would be a Restricted Subsidiary (after giving effect to such sale or transfer), such buyer or transferee shall be a Subsidiary Guarantor;

(c) any Subsidiary of the Company or the Company may merge or consolidate with another Person (that is not the Company or any of its Subsidiaries) if (x) the Company or such Subsidiary involved in the merger or the consolidation is the surviving Person and (y) immediately prior to and after giving effect to such merger or consolidation, there exists no Event of Default; and

(d) as permitted by Section 7.04(b) and (e).

**7.04 Disposition of Assets.** Permit any Disposition (whether in one or a series of transactions) of any property or assets (including Accounts, notes receivable, and/or chattel paper, with or without recourse) or enter into any agreement so to do, except:

(a) Dispositions of Vehicles and other inventory in the ordinary course of business;

(b) Dispositions of assets, properties or businesses (including the capital stock of Subsidiaries and Franchises) by the Company or any of its Subsidiaries, including Disposition of assets, including Franchises, the Disposition of which the Company determines to be in its best interest; provided that (A) no Event of Default will result from such Disposition, (B) the Company shall be in compliance with Section 7.11, (C) the Total Revolving Outstandings shall not exceed the lesser of the pro forma Revolving Borrowing Base or the Aggregate Revolving Commitments, (D) the Total Used Vehicle Floorplan Outstandings shall not exceed the lesser of the pro forma Used Vehicle Floorplan Borrowing Base or the Aggregate Used Vehicle Floorplan Commitments and (E) the Total New Vehicle Floorplan Outstandings shall not exceed the Aggregate New Vehicle Floorplan Commitments, in each case, after giving effect to such Disposition.

(c) Dispositions of equipment and other property which is obsolete, worn out or no longer used in or useful to such Person's business, all in the ordinary course of business;

(d) Dispositions occurring as the result of a casualty event, condemnation or expropriation;

(e) Dispositions in any year of other property, assets (including capital stock of its Subsidiaries and Affiliates) or businesses of the Company not otherwise permitted by clauses (a) through (d) of this Section 7.04; provided that the Net Cash Proceeds (excluding income taxes reasonably estimated to be actually payable within two years of the date of such Disposition as a result of any gain recognized in connection therewith) realized from such Disposition in any applicable year in excess of ten percent (10%) of the tangible assets of the Company as of the beginning of such year are either reinvested within one (1) year in useful assets or used to repay the Obligations, or, with the consent of the Administrative Agent, other senior Indebtedness (without any permanent reduction of any applicable Commitments);

(f) Dispositions pursuant to Qualified Sale/Leaseback Transactions so long as no Event of Default exists under Section 8.01(b) or (e);

(g) Dispositions of chattel paper, Accounts arising from the wholesale of parts and accessories, and retail sales contracts, in each case in arms-length transactions for fair value in the ordinary course of business;

(h) As permitted in Section 7.03; and

(i) Dispositions of assets (i) by the Company to any Subsidiary Guarantor, (ii) by any Subsidiary to the Company or any Subsidiary Guarantor, or (iii) by any Subsidiary that is not a Subsidiary Guarantor to another Subsidiary that is not a Subsidiary Guarantor; provided, however, that if the recipient of such assets would be a Restricted Subsidiary (after giving effect to such Disposition), such recipient shall be a Subsidiary Guarantor;

provided, that in the case of a Disposition pursuant to clause (b), (d), (e) or (f), (i) if the aggregate expected Disposition Proceeds of such Disposition are greater than \$50,000,000, the Company shall have given notice to the Administrative Agent stating the proposed date of such Disposition and the expected

amount of Disposition Proceeds, and (ii) if the aggregate expected Disposition Proceeds of such Disposition are greater than \$75,000,000, or after giving pro forma effect to such Disposition either the Revolving Borrowing Base or the Used Vehicle Floorplan Borrowing Base is decreased by more than ten percent (10%), (y) the Company shall have furnished to the Administrative Agent pro forma historical financial statements as of the end of the most recently completed fiscal year of the Company and most recent interim fiscal quarter, if applicable, giving effect to such Disposition and all other Dispositions consummated since such fiscal year end, and (z) the Company and its Subsidiaries shall be in Pro Forma Compliance after giving effect to such Disposition, as evidenced by a Pro Forma Compliance Certificate, Pro Forma Revolving Borrowing Base Certificate and a Pro Forma Used Vehicle Floorplan Borrowing Base Certificate delivered simultaneously with such pro forma historical financial statements. The Revolving Borrowing Base or Used Vehicle Floorplan Borrowing Base (as applicable) shall not change as a result of such Disposition until such Disposition actually occurs, and the Company and its Subsidiaries shall promptly notify the Administrative Agent when such Disposition occurs or if the date of such Disposition or amount of such Disposition Proceeds has changed or is expected to change.

Notwithstanding anything to the contrary contained in this Section 7.04, neither the Company nor any Subsidiary may make any Disposition (other than, to the extent constituting a Disposition, any Investment in any Designated Escrow Subsidiary permitted under Section 7.05) to any Designated Escrow Subsidiary during the term of this Agreement.

**7.05 Investments.** Make or permit to exist any Investment in any Person, except for:

- (a) Permitted Acquisitions;
- (b) extensions of credit in the nature of Accounts or notes receivable and/or chattel paper arising from the sale of goods and services in the ordinary course of business;
- (c) shares of stock, obligations or other securities received in settlement of claims arising in the ordinary course of business;
- (d) Investments in securities maturing within two (2) years and issued or fully guaranteed or insured by the United States of America or any state or agency thereof;
- (e) Investments in commercial paper maturing within one year from the date of acquisition thereof and having, at such date of acquisition, a credit rating of at least A-1 from S&P and P-1 from Moody's;
- (f) Investments in certificates of deposit, banker's acceptances and time deposits maturing within one year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the Laws of the United States of America or any State thereof that has a combined capital and surplus and undivided profits of not less than \$500,000,000, or any Lender;
- (g) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (d) above and entered into with a financial institution satisfying the criteria described in clause (f) above;
- (h) money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated or invest solely in the assets described in clauses (e) through (g) above and (iii) have portfolio assets of at least \$5,000,000,000; and
- (i) Investments to the extent the payment for such Investment is made solely with Equity Interests of the Company;
- (j) Investments in seller-financed notes and retail sales contracts in connection with Vehicles; provided that the sum of (i) such Investments described in this Section 7.05(j) (on a gross basis

excluding any reserves), plus (ii) the aggregate face amount of Indebtedness permitted under Section 7.01(n) shall not exceed \$35,000,000 at any time;

(k) Investments in (including loans to) the Company or wholly-owned Subsidiaries that are Subsidiary Guarantors;

(l) Investments in (including loans to) Subsidiaries that are not Subsidiary Guarantors (including any equity Investments in any Captive Insurance Company to meet the insurance capital requirements of such Captive Insurance Company to the extent required by applicable law or regulation) in an aggregate amount of not more than \$50,000,000 during the term of this Agreement;

(m) Investments in an aggregate amount which, together with the aggregate amount of Restricted Payments made by the Company pursuant to Section 7.10(a)(i), shall not exceed the 7.10(a)(i) RP Basket Limit at the time of each such Investment, subject to satisfaction of the conditions set forth in the definition of 7.10(a)(i) RP Basket Limit;

(n) without counting against the 7.10(a)(i) RP Basket Limit set forth in Section 7.10(a)(i) below, the Company may make other Investments so long as the Consolidated Total Leverage Ratio is no greater than 3.00 to 1.00 (determined on a pro forma basis after giving effect to such Investment and any other Investment made on such date or at any time after the Applicable Four-Quarter Period);

(o) Investments in fixed or floating rate demand notes issued by original equipment manufacturers (or their captive finance companies), in each case with a credit rating of at least A- from S&P and A3 from Moody's; and

(p) other Investments in an aggregate outstanding amount of not more than \$75,000,000 during the term of this Agreement.

Notwithstanding anything to the contrary contained in this Section 7.05, neither the Company nor any Subsidiary may make any Investment in any Designated Escrow Subsidiary during the term of this Agreement other than Investments otherwise permitted by this Section 7.05 that do not exceed an aggregate amount necessary to pay (i) the administrative expenses of any Designated Escrow Subsidiary in the ordinary course of business and (ii) interest and premiums in respect of the Indebtedness incurred by such Designated Escrow Subsidiary.

**7.06 Transactions with Affiliates.** Enter into any transaction of any kind with any Affiliate of the Company, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to the Company or such Subsidiary as would be obtainable by the Company or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate; provided that the foregoing restriction shall not apply to any transaction between or among the Company or any Subsidiary Guarantor and any other Subsidiary Guarantor or Subsidiary Guarantors.

**7.07 Other Agreements.** Enter into any agreement containing any provision which would be violated or breached by the Company's or such Subsidiary's performance of its Obligations hereunder or under any Loan Document delivered or to be delivered by the Loan Parties hereunder or in connection herewith, except for any such agreement the violation or breach of which would not reasonably be expected to have a Material Adverse Effect.

**7.08 Fiscal Year; Accounting.** (a) Change its fiscal year or (b) change its method of accounting (other than, in the case of clause (b), immaterial changes and methods and changes authorized or required by GAAP or permitted by Section 1.04(b)).

**7.09 Pension Plans.** Permit any condition to exist in connection with any Pension Plan which might constitute grounds for the PBGC to institute proceedings to have such Pension Plan terminated or a trustee appointed to administer such Pension Plan, or engage in, or permit to exist or occur any other

condition, event or transaction with respect to any Pension Plan which could be expected to have Material Adverse Effect.

#### 7.10 Restricted Payments and Distributions.

(a) Restricted Payments. Declare or make any Restricted Payment, except that the Company or any Subsidiary of the Company may pay dividends to the Company (directly or indirectly) or to another Subsidiary Guarantor that is a wholly-owned Subsidiary of the Company at any time, and may also make the following Restricted Payments, provided that, (x) immediately after giving effect to the declaration of any dividend, and the payment of any Restricted Payment, there exists no Default under Section 8.01(a) or (f) or Section 8.03(a) or (g) and no Event of Default, and (y) after giving pro forma effect to the declaration of any dividend and the payment of any Restricted Payment made pursuant to clause (i), (ii), (iii), (iv) or (vi) below, the Company is in Pro Forma Compliance with the covenants contained in Section 7.11:

(i) the Company may declare and pay cash dividends on its capital stock and may purchase shares of its capital stock; provided that, at the time of any such cash dividend payment or share purchase and after giving effect to such cash dividend payment or share purchase, the sum of (A) the aggregate amount payable or paid in respect of all cash dividends by the Company or shares purchased by the Company (other than shares purchased pursuant to clause (ii) below) on or after June 30, 2019 plus (B) the aggregate amount of Investments made by the Company on or after June 30, 2019 pursuant to Section 7.05(m), shall not exceed the sum of (x) \$642,000,00 plus (or minus if negative) (y) one-half (1/2) of the aggregate Consolidated Net Income of the Company for the period (taken as one accounting period) beginning on July 1, 2019 up to the end of the Company's most recent fiscal quarter for which internal financial statements have been delivered to the Administrative Agent plus (z) 100% of the aggregate Net Cash Proceeds received by the Company after July 1, 2019 as a contribution to its common equity capital or from the issue or sale of Equity Interests of the Company or from the issue or sale of convertible or exchangeable preferred stock or convertible or exchangeable debt securities of the Company that have been converted into or exchanged for such Equity Interests (other than Equity Interests, preferred stock or debt securities sold to a Subsidiary of the Company and other than any contribution by a Subsidiary) (the product described above at any time being referred to herein as the "7.10(a)(i) RP Basket Limit");

(ii) without counting against the 7.10(a)(i) RP Basket Limit set forth in Section 7.10(a)(i) above or restricting the Restricted Payments permitted to be made by Section 7.10(a)(iii), the Company and its Subsidiaries may repurchase, redeem or otherwise acquire or retire for value any Equity Interests of the Company or any such Subsidiaries in an aggregate amount not to exceed \$20,000,000 in any fiscal year;

(iii) without counting against the 7.10(a)(i) RP Basket Limit set forth in Section 7.10(a)(i) above or restricting the Restricted Payments permitted to be made by Section 7.10(a)(ii), the Company may make other Restricted Payments so long as the Consolidated Total Leverage Ratio of the Company and its Restricted Subsidiaries on a consolidated basis is no greater than 3.0 to 1 (determined on a pro forma basis for the most recently ended four full fiscal quarters for which internal financial statements have been delivered to the Administrative Agent prior to such Restricted Payment);

(iv) the Company may declare and pay stock dividends directly or indirectly;

(v) the Company may repurchase Equity Interests deemed to occur upon the exercise of stock options if those Equity Interests represent all or a portion of the exercise price of those options

(vi) the Company may repurchase fractional shares arising out of stock dividends, splits or combinations or business combinations; and

(vii) the Company may pay any dividend or distribution on, or redemption of, Equity Interests pursuant to clause (i) within 60 days after the date of declaration or notice thereof, if at the date of declaration or the giving of notice, the payment would have complied with the provisions of this Agreement.

(b) Distributions. Distribute any funds from any depository account of the Company or a Vehicle Borrower to any Vehicle Borrower with respect to which any Event of Default under Section 8.01(e) exists, except to the extent necessary to cure such Event of Default.

Notwithstanding anything to the contrary contained in this Section 7.10, neither the Company nor any Subsidiary may make any dividend or other Restricted Payment to the Designated Escrow Subsidiary during the term of this Agreement.

#### **7.11 Financial Covenants.**

(a) Consolidated Fixed Charge Coverage Ratio. Permit the Consolidated Fixed Charge Coverage Ratio, as of the end of any fiscal quarter, to be less than 1.20 to 1.00.

(b) Consolidated Total Lease Adjusted Leverage Ratio. Permit the Consolidated Total Lease Adjusted Leverage Ratio, as of the end of any fiscal quarter, to be more than 5.75 to 1.00.

**7.12 Change in Nature of Business.** Engage in any material line of business substantially different from those lines of business conducted by the Company and its Subsidiaries on the date hereof or any business substantially related or incidental thereto.

**7.13 Use of Proceeds.** Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose, other than in connection with Restricted Payments constituting share repurchases permitted pursuant to Section 7.10(a)(i)-(iii) or (vii).

**7.14 Burdensome Agreements.** Enter into any Contractual Obligation (other than this Agreement or any other Loan Document) that

(a) limits the ability (i) of any Subsidiary (other than any Designated Escrow Subsidiary) to pay dividends to any Loan Party or to otherwise transfer property to any Loan Party, (ii) of any Subsidiary to Guarantee the Obligations or (iii) of the Company or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person in favor of the Administrative Agent for the benefit of the Secured Parties; provided, however, that (W) clause (i) shall not prohibit any Subsidiary Guarantor from complying with minimum capitalization, working capital, net worth or financial ratios imposed by or pursuant to any Franchise Agreement or Framework Agreement, (X) clauses (i) and (iii) shall not prohibit any negative pledge or restriction on transfer incurred or provided in favor of any holder of secured Indebtedness permitted hereunder (including Permitted Floorplan Indebtedness and Permitted Real Estate Debt) solely to the extent any such negative pledge or restriction on transfer relates to the property financed by or securing such Indebtedness, (Y) clauses (i) and (iii) shall not prohibit customary restrictions on assignments, subletting or other transfers contained in the documents governing Permitted Sale/Leaseback Transactions or in other leases, licenses and similar agreements entered into in the ordinary course of business (provided that such restrictions are limited to the property subject to such Qualified Sale/Leaseback Transaction, lease, license or other agreement) and (Z) clause (i), (ii) and (iii) shall not prohibit provisions contained in the Indentures on the date hereof or provisions contained in any indenture governing unsecured senior notes issued by the Company which notes are permitted hereunder, provided that such provisions are no more restrictive on the Borrower or any Subsidiary than those contained in the Indentures on the date hereof; or

(b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure the Obligations.

**7.15 [Reserved].**

**7.16 Prepayments, etc. of Certain Indebtedness.** Prepay, redeem, purchase, defease, settle in cash or otherwise satisfy prior to the scheduled maturity thereof in any manner any Indebtedness, other than Obligations under the Loan Documents and prepayments of Indebtedness made in order to effect a refinancing of such Indebtedness by other Indebtedness that is permitted under Section 7.01 of this Agreement (each such prepayment, redemption, purchase, defeasement, settlement or satisfaction referred to as an “Indebtedness Prepayment”), except that the Company may make Indebtedness Prepayments so long as (i) (A) both immediately prior to any such Indebtedness Prepayment and after giving effect to such Indebtedness Prepayment no Default or Event of Default shall exist and (B) the aggregate amount of such Indebtedness Prepayments does not exceed \$75,000,000 during any fiscal year or (ii) both immediately prior to any such Indebtedness Prepayment and after giving effect to such Indebtedness Prepayment: (X) no Default or Event of Default shall exist, (Y) the Company and its Subsidiaries shall be in Pro Forma Compliance, and (Z) the Pro Forma Prepayment Test Amount is equal to or greater than \$150,000,000 on a pro forma basis for the fiscal quarter during which such Indebtedness Prepayment is made and each of the next three fiscal quarters (as evidenced, in the case of clauses (Y) and (Z), by a Pro Forma Compliance Certificate and a Prepayment Test Amount Certificate submitted not less than 5 Business Days and not more than 90 days prior to the date of any such Indebtedness Prepayment), in which case, such Indebtedness Prepayments pursuant to this clause (ii) may be made in an amount of up to the difference (if a positive number) between such Prepayment Test Amount (as measured prior to giving effect to such Indebtedness Prepayment) and \$150,000,000. Notwithstanding the foregoing, in the event the Miller Acquisition is not consummated or if consummated, the assets and equity acquired are less than all of the assets and equity proposed to be acquired pursuant to the terms of the Miller Acquisition Documents, the Company may redeem up to the entire principal amount of the Senior Notes pursuant to the “Special Mandatory Redemption” provisions as set forth in the indentures pursuant to which such Senior Notes are to be issued.

**7.17 Excluded Collateral.** Grant to any Person any Lien on any Excluded Property unless the Administrative Agent (for the benefit of the Secured Parties) has a Lien on such property, other than (i) Liens on assets of a Franchise (or stock of the Subsidiary that owns such Franchise) granted to the respective franchisor, (ii) Liens granted on Excluded Property to a holder of a Permitted Lien on such Excluded Property where a grant of a security interest to the Administrative Agent in such Excluded Property would violate or invalidate such asset or agreement governing such asset or create a right of termination in favor of the holder of such Permitted Lien on such Excluded Property, (iii) Liens on Excluded Property constituting real property, fixtures and related real property rights, and (iv) Excluded Property consisting of contracts related to real property, fixtures or related real property rights, or proceeds of real property, fixtures, related real property rights or related contracts (including, without limitation, insurance proceeds in respect of the foregoing), that in each case of this clause (iv) secures Permitted Real Estate Debt to the extent that a grant of a security interest thereon to the Administrative Agent would conflict with or result in a violation of the terms of such Permitted Real Estate Debt.

**7.18 Perfection of Deposit Accounts.** Without the prior written consent of the Administrative Agent, permit any Person (other than the Administrative Agent (on behalf of the Secured Parties) to obtain any deposit account control agreement (or otherwise perfect any Lien) any deposit account of the Company or any of its Subsidiaries (other than any deposit account of any Designated Escrow Subsidiary containing only proceeds of the Indebtedness such Designated Escrow Subsidiary was formed to incur), other than a deposit account control agreement entered into with the agent, trustee or other secured party in respect of any Indebtedness that is permitted under this Agreement to be secured by a Lien on all or any portion of the Collateral constituting deposit accounts, in each case to the extent that the Administrative Agent is also a party thereto.

**7.19 Acquisitions.** Consummate any Acquisition, unless (i) the Person to be (or whose assets are to be) acquired does not oppose such Acquisition and the material line or lines of business of the Person to be acquired are substantially the same as one or more line or lines of business conducted by the Company and its Subsidiaries, or substantially related or incidental thereto, (ii) no Default shall have occurred and be continuing either immediately prior to or immediately after giving effect to such Acquisition, (iii) [intentionally omitted]; (iv) if the aggregate Cost of Acquisition of such Acquisition is greater than \$50,000,000, the Company shall have given thirty (30) days’ notice to the Administrative



Agent stating the proposed date of such Acquisition and the expected Cost of Acquisition, (v) if the aggregate Cost of Acquisition of such Acquisition is greater than \$115,000,000, (y) the Company shall have furnished to the Administrative Agent pro forma historical financial statements as of the end of the most recently completed fiscal year of the Company and most recent interim fiscal quarter, if applicable, giving effect to such Acquisition and all other Acquisitions consummated since such fiscal year end, and (z) the Company and its Subsidiaries shall be in Pro Forma Compliance after giving effect to such Acquisition, as evidenced by a Pro Forma Compliance Certificate, Pro Forma Revolving Borrowing Base Certificate and Pro Forma Used Vehicle Floorplan Borrowing Base Certificate delivered simultaneously with such pro forma historical financial statements, and (vi) the Person acquired shall be a wholly-owned Subsidiary, or be merged into the Company or a wholly-owned Subsidiary, immediately upon consummation of the Acquisition (or if assets are being acquired, the acquiror shall be the Company or a wholly-owned Subsidiary). Nothing in this Section 6.19 shall alter any obligation of the Company or any applicable Subsidiary, to comply with the provisions of Section 6.14, subject to any applicable grace period set forth in Section 6.14. Notwithstanding the delivery of any evidence of Pro Forma Compliance (including any Pro Forma Revolving Borrowing Base Certificate or Pro Forma Used Vehicle Floorplan Borrowing Base Certificate), the Revolving Borrowing Base or Used Vehicle Borrowing Base (as applicable) shall not change as a result of such Acquisition until such Acquisition actually occurs, and the Company and its Subsidiaries shall promptly notify the Administrative Agent when such Acquisition occurs or if the date of such Acquisition or the amount of such Cost of Acquisition has changed or is expected to change.

**7.20 Amendments of Organizational Documents.** Amend its Organizational Documents in a manner that could reasonably be expect to (a) impair the enforceability of any Loan Document in any material respect or the perfection or priority of any Lien created thereunder, (b) impair in any material respect its ability to perform its obligations under the Loan Documents or (c) otherwise have a Material Adverse Effect.

**7.21 Sanctions.** Directly or indirectly, use the proceeds of any Credit Extension, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, to fund any activities of or business with any Person that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as Lender, Arranger, Administrative Agent, L/C Issuer, or otherwise) of Sanctions.

**7.22 Anti-Corruption Laws.** Directly or indirectly use the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anti-corruption legislation in other jurisdictions.

## ARTICLE VIII. EVENTS OF DEFAULT AND REMEDIES

**8.01 Revolving/Used Vehicle Events of Default.** Any of the following shall constitute a Revolving/Used Vehicle Event of Default (each a "Revolving/Used Vehicle Event of Default"):

(a) Non-Payment. Any Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Used Vehicle Floorplan Loan or Revolving Loan or any L/C Obligation (except for any payment necessary to cure an Out of Balance condition (as to which reference is made to clause (m) below)), or (ii) within five (5) days after the same becomes due, any interest on any Used Vehicle Floorplan Loan or Revolving Loan or any L/C Obligation, or any fee due hereunder with respect to the Used Vehicle Floorplan Facility or the Revolving Credit Facility, or (iii) within five (5) days after the same becomes due, any other amount payable hereunder or under any other Loan Document with respect to either the Used Vehicle Floorplan Facility or the Revolving Credit Facility; or

(b) Specific Covenants. The Company or any other Borrower fails to perform or observe any term, covenant or agreement contained in any of Section 6.01, 6.02(a), (b), (c) or (d), 6.03, 6.05 (as it relates to maintenance of existence), 6.10, 6.11, 6.12, 6.14 or Article VII; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after the giving of written notice to such Loan Party specifying the alleged default; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Company or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default. (i) The Company or any Subsidiary (other than a Specified Insurance Subsidiary or any Designated Escrow Subsidiary) (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which the Company or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which the Company or any Subsidiary (other than a Specified Insurance Subsidiary) is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by the Company or such Subsidiary as a result thereof is greater than the Threshold Amount; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any of its Restricted Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) The Company or any Subsidiary (other than a Specified Insurance Subsidiary or a Designated Escrow Subsidiary) becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within thirty (30) days after its issue or levy; or

(h) Judgments. There shall be entered against the Company or any of its Subsidiaries (other than the Specified Insurance Subsidiaries or a Designated Escrow Subsidiary) (i) one or more judgments or decrees in excess of the Threshold Amount in the aggregate at any one time outstanding for the Company and all its Subsidiaries (other than a Specified Insurance Subsidiaries) or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 60 consecutive days during which such judgment is not satisfied and a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect, excluding (in the case of clause (i)) those judgments or decrees for which

and to the extent that the Company or any such Subsidiary is insured and with respect to which the insurer has not contested or denied responsibility in writing (subject to usual deductibles); or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan, Multiemployer Plan or Multiple Employer Plan which has resulted or could reasonably be expected to result in liability of the Company under Title IV of ERISA to the Pension Plan, Multiemployer Plan, Multiple Employer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) the Company or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents. (i) Any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or (ii) any Security Instrument shall for any reason (other than pursuant to the terms thereof or as a result of the failure of the Administrative Agent or the Lenders to file UCC financing statements or UCC continuation statements) cease to create a valid security interest in the Collateral purported to be covered thereby or such security interest shall for any reason cease to be a perfected security interest with the priority provided therefor in such Security Instrument subject only to those Liens permitted by Section 7.02;

(k) Change of Control. There occurs any Change of Control; or

(l) Franchise Agreements and Framework Agreements. (i) Any Franchise Agreement or Framework Agreement is terminated or suspended or expires and a replacement for such Franchise Agreement or Framework Agreement is not entered into within 30 days of such termination, suspension or expiration, (ii) there occurs a default by any Person in the performance or observance of any term of any Franchise Agreement or Framework Agreement which is not cured within any applicable cure period therein, or (iii) there occurs any change in any Franchise Agreement or Framework Agreement, except in each case referred to in clauses (i), (ii) and (iii) to the extent such termination, suspension, expiration, default or change (either individually or in the aggregate) could not reasonably be expected to have a Material Adverse Effect; provided that, in the event a Franchise Agreement expires in accordance with its terms, if and for so long as the respective dealership Subsidiary and manufacturer or distributor are negotiating in good faith to renew such Franchise Agreement, and the respective manufacturer or distributor has not taken (and is not reasonably expected to take) any action to terminate such Franchise Agreement, such expiration shall not by itself be considered a Revolving/Used Vehicle Event of Default under this Section 8.01(l);

(m) Out of Balance. An audit performed by the Administrative Agent or New Vehicle Floorplan Swing Line Lender pursuant to the provisions of Section 6.10 reveals that any Vehicle of any Borrower securing the Obligations has been Out of Balance, and such Out of Balance condition either (i) (individually or in the aggregate) has had or could reasonably be expected to have a Material Adverse Effect or (ii) continues for thirty (30) days following notice from the Administrative Agent to the Company thereof; or

(n) New Vehicle Event of Default. A New Vehicle Event of Default shall occur and be continuing.

## **8.02 Remedies Upon Revolving/Used Vehicle Event of Default.**

(a) If any Revolving/Used Vehicle Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(i) declare the commitment of each Revolving Lender to make Revolving Loans and any obligation of any L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(ii) declare the commitment of each Used Vehicle Floorplan Lender to make Used Vehicle Floorplan Loans to be terminated, whereupon such commitments and obligation shall be terminated;

(iii) declare the unpaid principal amount of all outstanding Revolving Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document with respect to the Revolving Credit Facility to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Company;

(iv) declare the unpaid principal amount of all outstanding Used Vehicle Floorplan Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document with respect to the Used Vehicle Floorplan Facility to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Company;

(v) require that the Company Cash Collateralize the L/C Obligations (in an amount equal to the then Outstanding Amount thereof);

(vi) exercise on behalf of itself, the Revolving Lenders and the L/C Issuers all rights and remedies available to it, the Revolving Lenders and the L/C Issuers under the Loan Documents;

(vii) exercise on behalf of itself and the Used Vehicle Floorplan Lenders all rights and remedies available to it and the Used Vehicle Floorplan Lenders under the Loan Documents;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to any Borrower under the Bankruptcy Code of the United States, the obligation of each Revolving Lender and each Used Vehicle Floorplan Lender to make Revolving Loans and Used Vehicle Floorplan Loans, as applicable, and any obligation of each L/C Issuer to make L/C Credit Extensions shall automatically terminate and the unpaid principal amount of all outstanding Revolving Loans and Used Vehicle Floorplan Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Company to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent, any Revolving Lender or any Used Vehicle Floorplan Lender.

(b) Notwithstanding the above, with respect to a Revolving/Used Vehicle Event of Default described in Section 8.01(n), if such is caused solely by the occurrence of a single Event of Default occurring under Section 8.03(a), (g) or (h) and affects only one New Vehicle Borrower and no other Event of Default has occurred and is continuing, the Administrative Agent shall not be entitled to accelerate the Revolving Credit Facility or the Used Vehicle Floorplan Facility for a period of thirty (30) days from the date of such Revolving/Used Vehicle Event of Default.

(c) In addition to the foregoing, if any Revolving/Used Vehicle Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders take any or all of the following actions:

(i) foreclose upon, take possession of, or otherwise exercise any remedies available to it under any Security Instrument with respect to, any of the Collateral, or

(ii) take any action to perfect or preserve the rights of the Administrative Agent with respect to any Collateral, including filing any appropriate claim or document with respect to any Collateral in any proceeding under any Debtor Relief Law.

**8.03 New Vehicle Events of Default.** Any of the following shall constitute a New Vehicle Event of Default in respect of any one or more New Vehicle Borrowers (each, a "New Vehicle Event of Default"):

(a) Non-Payment. (i) Any Borrower or any other Loan Party fails to pay (A) when and as required to be paid herein, any amount of principal of any New Vehicle Floorplan Loan or any New Vehicle Floorplan Overdraft (except for any payment necessary to cure an Out of Balance condition (as to which reference is made to clause (ii) below)), or (B) within five (5) days after the same becomes due, any interest on any New Vehicle Floorplan Loan, or any fee due hereunder with respect to the New Vehicle Floorplan Facility, or (C) within five days after the same becomes due, any other amount payable hereunder or under any other Loan Document with respect to the New Vehicle Floorplan Facility, or (ii) the Company shall fail to cure any Out of Balance condition, which condition shall remain unremedied for a period of four (4) Business Days following notice thereof by the Administrative Agent or New Vehicle Floorplan Swing Line Lender to the Company; or

(b) Specific Covenants. The Company fails to perform or observe any term, covenant or agreement contained in Section 7.11.

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after the giving of written notice to such Loan Party specifying the alleged default; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Company or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) Revolving/Used Vehicle Event of Default. (i) A Revolving/Used Vehicle Event of Default which has not been cured or waived within thirty (30) days of the occurrence of such Revolving/Used Vehicle Event of Default, (ii) repayment of amounts outstanding under the Revolving Credit Facility or the Used Vehicle Floorplan Facility shall be accelerated, or (iii) the Company shall fail to pay any principal, interest or fees due under the Revolving Credit Facility or the Used Vehicle Floorplan Facility within thirty (30) days of the due date; or

(f) Cross-Default. (i) The Company or any New Vehicle Borrower (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which the Company or any New Vehicle Borrower is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which the Company or any New Vehicle Borrower is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by the Company or such New Vehicle Borrower as a result thereof is greater than the Threshold Amount; or

(g) Insolvency Proceedings, Etc.

(i) the Company or any New Vehicle Borrower shall (A) voluntarily commence any proceeding or file any petition seeking relief under Title 11 of the United States Code or any other federal, state or foreign bankruptcy, insolvency, liquidation or similar law, (B) consent to

the institution of, or fail to contravene in a timely and appropriate manner to any such proceeding or the filing of any such petition, (C) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator or similar official for such Person or for a substantial part of such Person's property or assets, (D) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (E) make a general assignment for the benefit of creditors, or (F) become unable, admit in writing its inability or fail generally to pay its debts as they become due; or

(ii) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (a) relief in respect of the Company or any New Vehicle Borrower, or of a substantial part of the property or assets of any such Person, under Title 11 of the United States Code or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, (B) the appointment of a receiver, trustee, custodian, sequestrator or similar official for any such Person or for a substantial part of the property of any such Person or (C) the winding-up or liquidation of any such Person; and such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall continue unstayed and in effect for sixty (60) days; or

(h) Inability to Pay Debts; Attachment. (i) The Company or any New Vehicle Borrower becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within thirty (30) days after its issue or levy; or

(i) Judgments. There shall be entered against the Company or any of New Vehicle Borrower (i) one or more judgments or decrees in excess of the Threshold Amount in the aggregate at any one time outstanding for the Company and all its Subsidiaries or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 60 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect, excluding (in the case of clause (i)) those judgments or decrees for which, and to the extent that, the Company or any such Subsidiary is insured and with respect to which the insurer has not contested or denied in writing (subject to usual deductibles); or

(j) Franchise Agreements and Framework Agreement. With respect to the Company or any New Vehicle Borrower, (i) any Franchise Agreement or Framework Agreement of the Company or such New Vehicle Borrower is terminated or suspended or expires and a replacement for such Franchise Agreement or Framework Agreement is not entered into within thirty (30) days of such termination, suspension or expiration; or (ii) there occurs a default by any Person in the performance or observance of any term of any Franchise Agreement or Framework Agreement which is not cured within any applicable cure period therein, except in each case referred to in clauses (i) and (ii) to the extent such termination, suspension, expiration, or default (either individually or in the aggregate) could not reasonably be expected to have a Material Adverse Effect; provided that, in the event a Franchise Agreement expires in accordance with its terms, if and for so long as the respective dealership Subsidiary and manufacturer or distributor are negotiating in good faith to renew such Franchise Agreement, and the respective manufacturer or distributor has not taken (and is not reasonably expected to take) any action to terminate such Franchise Agreement, such expiration shall not by itself be considered a New Vehicle Event of Default under this Section 8.03(j); or

(k) Invalidity of Loan Documents and Collateral. (i) Any Loan Document with respect to the Company or any New Vehicle Borrower, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or (ii) any Security Instrument shall for any reason (other than pursuant to the terms thereof) cease to create a valid security interest in the Collateral purported to be covered thereby or such security interest shall for any reason cease to be a perfected and first priority security interest subject only to those Liens permitted by Section 7.02.

#### 8.04 Remedies Upon New Vehicle Event of Default.

(a) Upon the occurrence and during the continuance of a New Vehicle Event of Default under Section 8.03(a), (b), (c), (d), (f), (g), (h), (i), (j) or (k) with respect to the Company or any New Vehicle Borrower, the Administrative Agent may, and at the direction of the Required Lenders, shall: (i) (A) make no further New Vehicle Floorplan Loans to such New Vehicle Borrower or (in the case of any New Vehicle Event of Default under Section 8.03(g) or (h) with respect to the Company) any New Vehicle Borrower during the continuance of such New Vehicle Event of Default and (B) the Administrative Agent and the New Vehicle Floorplan Swing Line Lender, upon three (3) days prior notice to the Company before the first debit, may initiate automatic debits from all such accounts of the Company or such New Vehicle Borrower in order to pay sums due under any New Vehicle Floorplan Loans of the Company or such New Vehicle Borrower. Notwithstanding the foregoing, the Lenders shall continue to make New Vehicle Floorplan Loans available to the Company and all New Vehicle Borrowers with respect to which no New Vehicle Event of Default has occurred unless otherwise provided in Section 8.04(c) below.

(b) Upon the occurrence and during the continuance of a New Vehicle Event of Default under Section 8.03(e) above, the Applicable Rate for all New Vehicle Floorplan Loans made to all New Vehicle Borrowers during the thirty (30) day period referred to therein shall increase by two percent (2%), such increase to occur (i) automatically if such New Vehicle Event of Default is the result of a failure on the part of the Borrowers to pay the principal amount of any Revolving Loan or Used Vehicle Floorplan Loan when due, or (ii) upon the request of the Required Lenders in the case of any other such New Vehicle Event of Default.

(c) Immediately upon the occurrence of a New Vehicle Event of Default under Section 8.03(e) or (f), or thirty (30) days after the occurrence of any New Vehicle Event of Default under Section 8.03(a), (b), (c), (d), (f), (g), (h), (i), (j) or (k) that is continuing, or immediately upon the occurrence of a second, concurrent New Vehicle Event of Default under Section 8.03(a), (b), (c), (d), (f), (g), (h), (i), (j) or (k) (unless otherwise permitted by the New Vehicle Floorplan Swing Line Lender pursuant to Section 2.07), no further New Vehicle Floorplan Loans shall be made to any New Vehicle Borrower and the Administrative Agent may, and at the request of the Required Lenders shall, by written or facsimile notice to the Company, take any of the following actions at the same or different times: (w) declare the commitment of each Lender to make New Vehicle Floorplan Loans to be terminated, whereupon such commitments and obligation shall be terminated and any such termination shall automatically terminate the New Vehicle Floorplan Swing Line, (x) declare the unpaid principal amount of all outstanding New Vehicle Floorplan Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Company, (y) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents and (ii) the New Vehicle Floorplan Swing Line Lender in its sole discretion may suspend and terminate all Payment Commitments and Payoff Letter Commitments, (iii) to the extent the New Vehicle Floorplan Swing Line Lender determines that such suspension and termination is permitted by the terms of such Payment Commitments and Payoff Letter Commitments) the New Vehicle Floorplan Swing Line Lender shall, at the request of the Required Lenders, suspend and terminate any or all of the Payment Commitments and Payoff Letter Commitments, and (iv) the Administrative Agent shall have all remedies available to it at law or in equity or as contained in any of the Loan Documents;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Company under the Bankruptcy Code of the United States, the obligation of each New Vehicle Lender to make New Vehicle Floorplan Loans shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, in each case without further act of the Administrative Agent or any Lender; and

provided further, that upon the occurrence of an actual or deemed entry of an order for relief with respect to any New Vehicle Borrower under the Bankruptcy Code of the United States, the obligation of each New Vehicle Floorplan Lender to make New Vehicle Floorplan Loans to such New Vehicle Borrower shall automatically terminate, the unpaid principal amount of all outstanding New Vehicle Floorplan Loans made to such New Vehicle Borrower and all interest and with respect thereto shall

automatically become due and payable, in each case without further act of the Administrative Agent or any New Vehicle Floorplan Lender.

(d) In addition to the foregoing, if any New Vehicle Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders take any or all of the following actions:

(i) foreclose upon, take possession of, or otherwise exercise any remedies available to it under any Security Instrument with respect to, any of the Collateral, or

(ii) take any action to perfect or preserve the rights of the Administrative Agent with respect to any Collateral, including filing any appropriate claim or document with respect to any Collateral in any proceeding under any Debtor Relief Law.

**8.05 Overdrawing of New Vehicle Floorplan Loans.** If at any time the aggregate outstanding principal amount of all (i) New Vehicle Floorplan Loans (including New Vehicle Floorplan Swing Line Loans and any outstanding New Vehicle Floorplan Overdraft), plus (ii) Requests for Borrowings of New Vehicle Floorplan Loans (including requests pursuant to Payment Commitments), exceeds (a) 110% of the Aggregate New Vehicle Floorplan Commitments and such condition exists for five (5) consecutive days or (b) the Aggregate New Vehicle Floorplan Commitments by any amount for fifteen (15) days out of any 30-day period, then, in such event, the New Vehicle Floorplan Swing Line Lender acting in its sole discretion may, and upon election of the Required Lenders shall, (y) take any and all actions reasonably necessary to suspend and/or terminate Payment Commitments and Payoff Letter Commitments and (z) elect by written notice to the Company to terminate the Aggregate New Vehicle Floorplan Commitments and to deem such occurrence as constituting a New Vehicle Event of Default. Nothing contained in this Section 8.05 shall be deemed to reduce the obligation of the Company and the Borrowers to make the payments required pursuant to Section 2.15.

**8.06 Application of Funds.** After the exercise of remedies provided for in this Article VIII (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall subject to Sections 2.26 and 2.27, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting accrued and unpaid interest on New Vehicle Floorplan Overdrafts ratably among the New Vehicle Floorplan Lenders in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting unpaid principal on New Vehicle Floorplan Overdrafts ratably among the New Vehicle Floorplan Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting accrued and unpaid interest on the New Vehicle Floorplan Swing Line Loans and the Used Vehicle Floorplan Swing Line Loans, ratably between the New Vehicle Floorplan Swing Line Lender and the Used Vehicle Floorplan Swing Line Lender in proportion to the respective amounts described in this clause Fourth payable to them;

Fifth, to payment of that portion of the Obligations constituting unpaid principal on the New Vehicle Floorplan Swing Line Loans and the Used Vehicle Floorplan Swing Line Loans, ratably between the New Vehicle Floorplan Swing Line Lender and the Used Vehicle Floorplan Swing Line Lender in proportion to the respective amounts described in this clause Fifth held by them;



Sixth, to payment of that portion of the Obligations constituting accrued and unpaid interest on the New Vehicle Floorplan Committed Loans and the Used Vehicle Floorplan Committed Loans, ratably among the New Vehicle Floorplan Lenders and the Used Vehicle Floorplan Lenders in proportion to the respective amounts described in this clause Sixth payable to them;

Seventh, to payment of that portion of the Obligations constituting unpaid principal on the New Vehicle Floorplan Committed Loans and the Used Vehicle Floorplan Committed Loans, ratably among the New Vehicle Floorplan Lenders and the Used Vehicle Floorplan Lenders in proportion to the respective amounts described in this clause Seventh held by them;

Eighth, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest, Letter of Credit Fees) payable to the Lenders and the L/C Issuers (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuers (including fees and time charges for attorneys who may be employees of any Lender or the L/C Issuers) and amounts payable under Article III), ratably among them in proportion to the respective amounts described in this clause Eighth payable to them;

Ninth, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Revolving Loans, L/C Borrowings and other Obligations under the Revolving Facility, ratably among the Revolving Lenders and the L/C Issuers in proportion to the respective amounts described in this clause Ninth payable to them;

Tenth, to payment of that portion of the Obligations constituting unpaid principal of the Revolving Loans and L/C Borrowings, ratably among the Revolving Lenders and the L/C Issuers in proportion to the respective amounts described in this clause Tenth held by them;

Eleventh, to the Administrative Agent for the account of the L/C Issuers, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrowers pursuant to Sections 2.03 and 2.26, such Cash Collateral to be allocated ratably between the L/C Issuers in proportion to the respective amounts of such L/C Obligations held by them;

Twelfth, to payment of that portion of the Obligations constituting Obligations then owing under Secured Hedge Agreements and Secured Cash Management Agreements, ratably among the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Twelfth payable to them;

Thirteenth, to the payment of all other Obligations of the Loan Parties owing under or in respect of the Loan Documents that are due and payable to the Administrative Agent and the other Secured Parties, or any of them, on such date, ratably based on the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Company or as otherwise required by Law;

provided that, Excluded Swap Obligations with respect to any Loan Party shall not be paid with amounts received from such Loan Party or its assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Obligations otherwise set forth above in this Section.

Subject to Section 2.03(c) and 2.26, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Eleventh above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

Notwithstanding the foregoing, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. Each Cash Management Bank or Hedge Bank not a party to the Credit Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article IX hereof for itself and its Affiliates as if a “Lender” party hereto. Excluded Swap Obligations with respect to any Loan Party shall not be paid with amounts received from such Loan Party, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Obligations otherwise set forth above in this Section.

## ARTICLE IX. ADMINISTRATIVE AGENT

**9.01 Appointment and Authority.** Each of the Lenders and each L/C Issuer hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuers, and neither the Company nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

**9.02 Rights as a Lender.** The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Company, any other Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

**9.03 Exculpatory Provisions.** The Administrative Agent or the Arranger, as applicable, shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent or the Arranger, as applicable:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the

Company or any of the other Borrowers or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to the Administrative Agent by the Company, a Lender or an L/C Issuer.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

**9.04 Reliance by Administrative Agent.** The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the applicable L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or such L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or such L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Company), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**9.05 Delegation of Duties.** The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

#### **9.06 Resignation of Administrative Agent.**

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuers and the Company. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Company, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such

earlier day as shall be agreed by the Required Lenders) (the “Resignation Effective Date”)), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders and the L/C Issuers, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that in no event shall any such successor Administrative Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Company and such Person remove such Person as Administrative Agent and, in consultation with the Company, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the “Removal Effective Date”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or any L/C Issuer under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and each L/C Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than as provided in Section 3.01(g) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The foregoing notwithstanding, upon the discharge of the retiring Administrative Agent’s duties hereunder, neither the retiring Administrative Agent nor the successor Administrative Agent or any New Vehicle Swing Line Lender shall be required to honor any request by a vehicle manufacturer or distributor or financial institution for advance of a New Vehicle Swing Line Loan, unless and until (A) such successor Administrative Agent and such manufacturer or distributor or financial institution (and if required pursuant to the terms of such Payment Commitment or Payoff Letter Commitment, the applicable New Vehicle Borrower) have entered into a new Payment Commitment or Payoff Letter Commitment, and (B) any existing Payment Commitment between such manufacturer or distributor or Payoff Commitment Letter between such financial institution and the retiring Administrative Agent has been terminated. The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the retiring or removed Administrative Agent’s resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (i) while the retiring or removed Administrative Agent was acting as Administrative Agent and (ii) after such resignation or removal for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including (a) acting as collateral agent or otherwise holding any collateral security on behalf of any of the Lenders and (b) in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.

(d) Any resignation by Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation as an L/C Issuer, Revolving Swing Line Lender, New Vehicle Floorplan Swing Line Lender and Used Vehicle Floorplan Swing Line Lender; provided that Bank of America shall continue to serve as New Vehicle Floorplan Swing Line Lender for at least 75 days following delivery of a notice of resignation as Administrative Agent. If Bank of America resigns as an

L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto, including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c). If Bank of America resigns as Revolving Swing Line Lender, New Vehicle Floorplan Swing Line Lender or Used Vehicle Floorplan Swing Line Lender, it shall retain all the rights of the Revolving Swing Line Lender, New Vehicle Floorplan Swing Line Lender or Used Vehicle Floorplan Swing Line Lender, as the case may be, provided for hereunder with respect to the applicable Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, Revolving Swing Line Lender, New Vehicle Floorplan Swing Line Lender and Used Vehicle Floorplan Swing Line Lender, (b) the retiring L/C Issuer, Revolving Swing Line Lender, New Vehicle Floorplan Swing Line Lender and Used Vehicle Floorplan Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit.

**9.07 Non-Reliance on Administrative Agent and Other Lenders.** Each Lender and each L/C Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and each L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

**9.08 No Other Duties, Etc.** Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers, Co-Syndication Agents or Co-Documentation Agents listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or an L/C Issuer hereunder.

**9.09 Administrative Agent May File Proofs of Claim; Credit Bidding.** In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Company or any other Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuers and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuers and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuers and the Administrative Agent under Sections 2.03(h) and (i), 2.17 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each L/C Issuer to make such payments to

the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuers, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.17 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or any L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or any L/C Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or any L/C Issuer in any such proceeding.

The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or any similar Laws in any other jurisdictions to which a Loan Party is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in clauses (a) through (h) of Section 10.01 of this Agreement, (iii) the Administrative Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action, and (iv) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

**9.10 Collateral and Guaranty Matters.** The Lenders and the L/C Issuers irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than contingent indemnification obligations) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to the Administrative Agent and the applicable L/C Issuer shall have been made), (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, (iii) that is owned by any Subsidiary if such Person ceases to be a Restricted Subsidiary as a result of a transaction permitted hereunder, or ~~(iii)~~ (iv) subject to Section 10.01, if approved, authorized or ratified in writing by the Required Lenders;

(b) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by [Section 7.02\(b\)](#);

(c) to release any Subsidiary Guarantor from its obligations under the Guaranty, [or to release any Subsidiary that is a Vehicle Borrower from all or part of its obligations as a Vehicle Borrower under the Loan Documents](#), if such Person ceases to be a [Restricted](#) Subsidiary as a result of a transaction permitted hereunder;

(d) to enter into Service Loaner Intercreditor Agreements with respect to Indebtedness permitted by [Section 7.01\(g\)](#);

(e) to enter into any FMCC Intercreditor Agreement, including any such agreement entered into on or after December 4, 2014, with respect to Indebtedness permitted by [Section 7.01\(r\)](#);

(f) [intentionally omitted]

(g) to execute and deliver that certain letter agreement with Ford Motor Company, substantially in the form provided to the Lenders.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Subsidiary Guarantor from its obligations under the Guaranty pursuant to this [Section 9.10](#).

The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien purported to be created by the Security Instruments, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

**9.11 Secured Cash Management Arrangements and Secured Hedge Agreements.** Except as otherwise expressly set forth herein or in any Subsidiary Guaranty or any Security Instrument, no Cash Management Bank or Lender or Affiliate of a Lender party to a Related Swap Agreement that obtains the benefit of the provisions of [Section 8.06](#), any Subsidiary Guaranty or any Collateral by virtue of the provisions hereof or of the Subsidiary Guaranty or any Security Instrument shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this [Article IX](#) to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Cash Management Arrangements and Related Swap Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Lender or Affiliate of a Lender, as the case may be.

#### **9.12 Certain ERISA Matters.**

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into,

participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

**9.13 Recovery of Erroneous Payments.** Without limitation of any other provision in this Agreement, if at any time the Administrative Agent makes a payment hereunder in error to any Lender Recipient Party, whether or not in respect of an Obligation due and owing by the Borrower at such time, where such payment is a Rescindable Amount, then in any such event, each Lender Recipient Party receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Lender Recipient Party in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. Each Lender Recipient Party irrevocably waives any and all defenses, including any "discharge for value" (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Lender Recipient Party promptly upon determining that any payment made to such Lender Recipient Party comprised, in whole or in part, a Rescindable Amount.



## ARTICLE X. MISCELLANEOUS

**10.01 Amendments, Etc.** Subject to Section 3.03(c) and the last paragraph of this Section 10.01, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Company or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Company or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

- (a) waive any condition set forth in Section 4.01(a) without the written consent of each Lender;
- (b) extend or increase the Revolving Commitment, the New Vehicle Floorplan Commitment or the Used Vehicle Floorplan Commitment of any Lender (or reinstate any Revolving Commitment, New Vehicle Floorplan Commitment or Used Vehicle Floorplan Commitment terminated pursuant to Section 8.05) without the written consent of such Lender;
- (c) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Lenders (or any of them) or any scheduled or mandatory reduction of the Aggregate Revolving Commitments, Aggregate New Vehicle Floorplan Commitments or Aggregate Used Vehicle Floorplan Commitments hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby; provided, however, that only the consent of the Required Lenders shall be required to postpone any date fixed for any mandatory prepayment of principal of any Loan or interest accrued on such principal amount;
- (d) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby; provided, however, that only the consent of the Required Lenders shall be necessary (i) to amend the definition of "Default Rate" or to waive any obligation of any Borrower to pay interest or Letter of Credit Fees at the Default Rate or (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder;
- (e) change Section 2.21 or Section 8.06 in a manner that would alter the pro rata payments or pro rata sharing of payments required thereby without the written consent of each Lender;
- (f) change any provision of this Section or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;
- (g) release the Company from the Company Guaranty or release all or substantially all of the value of the Subsidiary Guaranty, without the written consent of each Lender; or
- (h) release all or substantially all of the Collateral in any transaction or series of related transactions, except as specifically required by the Loan Documents, without the written consent of each Lender;

and, provided further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the applicable L/C Issuer in addition to the Lenders required above, affect the rights or duties of such L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the applicable Swing Line Lender in addition to the Lenders required above, affect the rights or duties of such Swing Line Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the

Administrative Agent under this Agreement or any other Loan Document; and (iv) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended or the maturity of any of its Loans may not be extended, the rate of interest on any of its Loans may not be reduced and the principal amount of any of its Loans may not be forgiven, in each case without the consent of such Defaulting Lender and (y) any waiver, amendment, consent or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding anything to the contrary contained in this Section 10.01, (y) this Agreement may be amended and restated without the consent of any Lender (but with the consent of the Company and Administrative Agent) if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Commitments of such Lender shall have terminated, such Lender shall have no other commitment or other obligation hereunder and shall have been paid in full all principal, interest and other amounts owing to it or accrued for its account under this Agreement, and (z) Administrative Agent and the Company may amend or modify this Agreement and any other Loan Document to (1) cure any ambiguity, omission, defect or inconsistency therein or (2) grant a new Lien for the benefit of the Secured Parties, extend an existing Lien over additional property for the benefit of the Secured Parties or join additional Persons as Credit Parties.

Notwithstanding any provision herein to the contrary, if the Administrative Agent and the Company acting together identify any ambiguity, omission, mistake, typographical error or other defect in any provision of this Agreement or any other Loan Document (including the schedules and exhibits thereto), then the Administrative Agent and the Borrower shall be permitted to amend, modify or supplement such provision to cure such ambiguity, omission, mistake, typographical error or other defect, and such amendment shall become effective without any further action or consent of any other party to this Agreement.

#### **10.02 Notices; Effectiveness; Electronic Communication.**

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or electronic mail as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Company, a Borrower, any other Loan Party, the Administrative Agent, Bank of America as an L/C Issuer, the Revolving Swing Line Lender, the New Vehicle Floorplan Swing Line Lender, the Used Vehicle Floorplan Swing Line Lender or the New Vehicle Floorplan Operations Group to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender or L/C Issuer, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender or L/C Issuer on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Company).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic

communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuers hereunder may be delivered or furnished by electronic communication (including e-mail, FpMl messaging and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or any L/C Issuer pursuant to Article II if such Lender or such L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent, the Swing Line Lenders, the L/C Issuers or the Company may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement) and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Company, any Lender, any L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Company's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to the Company, any Lender, any L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Company (for itself and on behalf of the other Borrowers), the Administrative Agent, Bank of America, as an L/C Issuer, the Revolving Swing Line Lender, the New Vehicle Floorplan Swing Line Lender, the Used Vehicle Floorplan Swing Line Lender, and the New Vehicle Operations Group may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender or L/C Issuer may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the Company, the Administrative Agent, the L/C Issuers, the Revolving Swing Line Lender, the New Vehicle Floorplan Swing Line Lender, the Used Vehicle Floorplan Swing Line Lender and the New Vehicle Floorplan Operations Group. In addition, each Lender and each L/C Issuer agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender or L/C Issuer, as applicable. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side

Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to any Borrower or its securities for purposes of United States Federal or state securities laws.

(e) Reliance by Administrative Agent, L/C Issuer and Lenders. The Administrative Agent, the L/C Issuers and the Lenders shall be entitled to rely and act upon any notices (including telephonic or electronic Revolving Committed Loan Notices, Revolving Swing Line Loan Notices, New Vehicle Floorplan Committed Loan Notices, New Vehicle Floorplan Swing Line Loan Notices, Used Vehicle Floorplan Committed Loan Notices, Used Vehicle Floorplan Swing Line Loan Notices, Letter of Credit Applications, and Conversion Notices) purportedly given by or on behalf of any Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Company and each Borrower shall indemnify the Administrative Agent, each L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Company or any Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

**10.03 No Waiver; Cumulative Remedies; Enforcement.** No failure by any Lender, any L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 or 8.04 for the benefit of all the Lenders and the L/C Issuers; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any L/C Issuer from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer) hereunder and under the other Loan Documents, (c) Bank of America as the New Vehicle Floorplan Swing Line Lender or the Used Vehicle Floorplan Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as Swing Line Lender) hereunder and under the other Loan Documents, (d) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.21), or (e) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 or 8.04 and (ii) in addition to the matters set forth in clauses (b), (c), (d) and (e) of the preceding proviso and subject to Section 2.21, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

**10.04 Expenses; Indemnity; Damage Waiver.**

(a) Costs and Expenses. The Company and each Borrower (jointly and severally) shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of one law firm acting as outside counsel for

the Administrative Agent and one law firm acting as local counsel in each jurisdiction where necessary), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by any L/C Issuer in connection with the issuance, amendment, reinstatement or renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Administrative Agent, any Lender or any L/C Issuer (including the fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or any L/C Issuer), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrowers. The Company and each Borrower (jointly and severally) shall indemnify the Administrative Agent (and any sub-agent thereof), the Arranger, each Lender and each L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (but limited, in the case of legal fees and expenses, to the reasonable and documented fees, disbursements and other charges of (i) one counsel for the Administrative Agent and Bank of America, as Arranger, taken together, (ii) one counsel for the Lenders and the L/C Issuers, taken together, (iii) if the Administrative Agent deems it necessary, one local counsel in each relevant jurisdiction, and (iv) in the case of any actual or perceived conflict of interest with respect to any of the counsel identified in clauses (i) through (iii) above, one additional counsel for each group of affected persons similarly situated, taken as a whole (which in the case of clause (iii) will, if the Administrative Agent deems it necessary, allow for up to one additional counsel in each relevant jurisdiction)), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Company or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Commitment, Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the applicable L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Company, any Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Company, any Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Company or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee, (y) result from a claim brought by the Company or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee’s obligations hereunder or under any other Loan Document, if the Company or such other Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction, or (z) arise out of a dispute solely between or among Indemnitees that does not involve an act or omission by any Loan Party or any Loan Party’s Affiliates, other than any action, suit, proceeding or claim against any Indemnitee in its capacity or in fulfilling its role as an agent, arranger, L/C issuer, swing lender or similar role under hereunder or under any other Loan Document. Without limiting the provisions of Section 3.01(c), this Section 10.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Company or any Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid

by it to the Administrative Agent (or any sub-agent thereof), any L/C Issuer, any Swing Line Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), such L/C Issuer, such Swing Line Lender or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lenders' Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or such L/C Issuer or such Swing Line Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or such L/C Issuer or such Swing Line Lender in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.20(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, neither the Company nor any Borrower shall assert, and each of the Company and each Borrower hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section and the indemnity provisions of Section 10.02(e) shall survive the resignation of the Administrative Agent, any L/C Issuer, Bank of America as the Revolving Swing Line Lender, the Used Vehicle Floorplan Swing Line Lender and the Used Vehicle Floorplan Swing Line Lender, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

**10.05 Payments Set Aside.** To the extent that any payment by or on behalf of the Company or any Borrower is made to the Administrative Agent, any L/C Issuer or any Lender, or the Administrative Agent, any L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, such L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and each L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuers under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

#### **10.06 Successors and Assigns.**

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted

hereby, except that neither the Company nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuers and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Commitment and the Revolving Loans at the time owing to it (including for purposes of this subsection (b), participations in L/C Obligations and in Revolving Swing Line Loans) or its New Vehicle Floorplan Commitment and the New Vehicle Floorplan Loans at the time owing to it (including for purposes of this subsection (b), participations in New Vehicle Floorplan Swing Line Loans), or its Used Vehicle Floorplan Commitment and the Used Vehicle Floorplan Loans at the time owing to it (including for purposes of this subsection (b), participations in Used Vehicle Floorplan Swing Line Loans) (such Lender's portion of Loans, Commitments and risk participations with respect to an Applicable Facility being referred to in this Section 10.06 as its "Applicable Share"); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment under any Applicable Facility and the Loans at the time owing to it under such Applicable Facility or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000 unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Company otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans and Commitments assigned (i.e. if a Lender assigns 25% of its Revolving Facility Commitment, such Lender must also simultaneously assign 25% of its New Vehicle Floorplan Commitment and 25% of its Used Vehicle Floorplan Commitment); and each assignment (whether partial or total) shall be allocated on a pro rata basis among the assigning Lender's Loans and Commitments under each of the Facilities; except that this clause (ii) shall not apply to rights in respect of the Revolving Swing Line Lender's, Used Vehicle Floorplan Swing Line Lender's or New Vehicle Floorplan Swing Line Lender's rights and obligations in respect of its applicable Swing Line Loans.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Company (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Company shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender;

(C) the consent of the L/C Issuers (such consent not to be unreasonably withheld or delayed) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding); and

(D) the consent of the applicable Swing Line Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of any Applicable Facility.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Company or any of the Company's Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or (C) any competitor of the Company which has been identified in writing by the Company in a document that has been posted on a site maintained by the Administrative Agent and available to all of the Lenders prior to assignor's and assignee's execution of the applicable Assignment and Assumption (any such Person, a "Competitor"), or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural person (or a holding company investment vehicle or trust for, or owned and operated for the primary benefit of a natural person). The Administrative Agent shall have no responsibility for determining whether any assignee is a Competitor.

(vi) Representation Regarding Competitors. The Assignment and Assumption shall contain a representation and warranty (A) from the assignor that the assignee is not a Competitor and (B) from the assignee that it is not primarily engaged in the business of owning or operating automobile dealerships.

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Company and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all



payment liabilities then owed by such Defaulting Lender to the Administrative Agent, any L/C Issuer or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, each Borrower (at its expense) shall execute and deliver a Revolving Note, New Vehicle Floorplan Note and Used Vehicle Floorplan Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Company (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Company, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by each of the Borrowers, any Lender and any L/C Issuer, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Company, any Borrower, the Revolving Swing Line Lender, the New Vehicle Floorplan Swing Line Lender, the Used Vehicle Floorplan Swing Line Lender, any L/C Issuer or the Administrative Agent, sell participations to any Person (other than (w) a Defaulting Lender, (x) a natural person or a holding company investment vehicle or trust for, or owned and operated for the primary benefit of a natural person, (y) the Company or any of the Company's Affiliates or Subsidiaries or (z) any competitor of the Company which has been identified in writing by the Company in a document that has been made available to all of the Lenders) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations, Revolving Swing Line Loans, New Vehicle Floorplan Swing Line Loans and/or Used Vehicle Floorplan Swing Line Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Company, the Borrowers, the Administrative Agent, the Lenders and the L/C Issuers shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 10.04(c) without regard to the existence of any participation. The Administrative Agent shall have no responsibility for determining whether any Participant is a competitor.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement and shall contain a representation and warranty (A) from the Lender selling the participation that the prospective participant is not a Competitor and (B) from the prospective participant that it is not primarily engaged in the business of owning or operating automobile dealerships; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, the Company agrees that each Participant shall be entitled to the benefits of Sections 3.01 and 3.04 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section (it being understood that the documentation required under Section 3.01(e) shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 3.05 and 10.13 as if it were an assignee under subsection (b) of this Section and (B) shall not be entitled to receive any greater payment under Sections 3.01 or 3.04, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrowers' request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 3.05 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.21 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant").

Register”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Company's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Company is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Company, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Resignation as L/C Issuer, Revolving Swing Line Lender, New Vehicle Floorplan Swing Line Lender or Used Vehicle Floorplan Swing Line Lender after Assignment. Notwithstanding anything to the contrary contained herein, (i) if at any time Bank of America assigns all of its Commitment and Loans pursuant to subsection (b) above, Bank of America may, (A) upon 30 days' notice to the Company and the Lenders, resign as an L/C Issuer and/or (B) upon 30 days' notice to the Company, resign as Revolving Swing Line Lender and/or (C) upon 30 days' notice to the Company, resign as New Vehicle Floorplan Swing Line Lender and/or (D) upon 30 days' notice to the Company, resign as Used Vehicle Floorplan Swing Line Lender, and (ii) if any time any other L/C Issuer assigns all of its Commitment and Loans pursuant to subsection (b) above, such L/C Issuer may, upon 30 days' notice to the Company and the Lenders, resign as an L/C Issuer. In the event of any such resignation as L/C Issuer, Revolving Swing Line Lender, New Vehicle Floorplan Swing Line Lender or Used Vehicle Floorplan Swing Line Lender, the Company shall be entitled to appoint from among the Lenders a successor L/C Issuer, Revolving Swing Line Lender, New Vehicle Floorplan Swing Line Lender or Used Vehicle Floorplan Swing Line Lender hereunder; provided, however, that no failure by the Company to appoint any such successor shall affect the resignation of Bank of America or any other Person as L/C Issuer, Revolving Swing Line Lender, New Vehicle Floorplan Swing Line Lender or Used Vehicle Floorplan Swing Line Lender, as the case may be. If Bank of America or any other Person resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of an L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as an L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make ~~Eurodollar~~Daily Simple SOFR Committed Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If Bank of America resigns as Revolving Swing Line Lender, it shall retain all the rights of the Revolving Swing Line Lender provided for hereunder with respect to Revolving Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Revolving Lenders to make ~~Eurodollar Rate~~Daily Simple SOFR Committed Loans or fund risk participations in outstanding Revolving Swing Line Loans pursuant to Section 2.04(c). If Bank of America resigns as New Vehicle Floorplan Swing Line Lender, it shall retain all the rights of the New Vehicle Floorplan Swing Line Lender provided for hereunder with respect to New Vehicle Floorplan Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the New Vehicle Floorplan Lenders to make ~~Eurodollar Rate~~Daily Simple SOFR Committed Loans or fund risk participations in outstanding New Vehicle Floorplan Swing Line Loans pursuant to Section 2.07(d). If Bank of America resigns as Used Vehicle Floorplan Swing Line Lender, it shall retain all the rights of the Used Vehicle Floorplan Swing Line Lender provided for hereunder with respect to Used Vehicle

Floorplan Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Used Vehicle Floorplan Lenders to make ~~Eurodollar Rate~~ Daily Simple SOFR Committed Loans or fund risk participations in outstanding Used Vehicle Floorplan Swing Line Loans pursuant to Section 2.12(c). Upon the appointment of a successor L/C Issuer, Revolving Swing Line Lender, New Vehicle Floorplan Swing Line Lender and/or Used Vehicle Floorplan Swing Line Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, Revolving Swing Line Lender, New Vehicle Floorplan Swing Line Lender or Used Vehicle Floorplan Swing Line Lender, as the case may be, and (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America or such other applicable retiring L/C Issuer to effectively assume the obligations of Bank of America or the applicable retiring L/C Issuer with respect to such Letters of Credit.

**10.07 Treatment of Certain Information; Confidentiality.** Each of the Administrative Agent, the Lenders and the L/C Issuers agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates, its auditors and its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to Section 2.22(c) or (ii) any actual or prospective counterparty (or its Related Parties) to any swap or derivative transaction relating to the Company and its obligations, (g) on a confidential basis to (i) any rating agency in connection with rating the Company or its Subsidiaries or the credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (h) with the consent of the Company or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, any Lender, any L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Company. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments. For purposes of this Section, "Information" means all information received from the Company or any Subsidiary relating to Company or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or any L/C Issuer on a nonconfidential basis prior to disclosure by the Company or any Subsidiary, provided that, in the case of information received from the Company or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Lenders and the L/C Issuers acknowledges that (a) the Information may include material non-public information concerning the Company or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

**10.08 Right of Setoff.** If an Event of Default shall have occurred and be continuing, each Lender, each L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits

(general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, such L/C Issuer or any such Affiliate to or for the credit or the account of the Company or any Borrower against any and all of the obligations of the Company or any Borrower, as applicable, now or hereafter existing under this Agreement or any other Loan Document to such Lender or such L/C Issuer, irrespective of whether or not such Lender or such L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Company or such Borrower may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender or such L/C Issuer different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.26 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, each L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, such L/C Issuer or their respective Affiliates may have. Each Lender and each L/C Issuer agrees to notify the Company and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

**10.09 Interest Rate Limitation.** Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Company. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

**10.10 Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement.

**10.11 Survival of Representations and Warranties.** All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

**10.12 Severability.** If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and

(b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, the L/C Issuers, the Revolving Swing Line Lender, the New Vehicle Floorplan Swing Line Lender or the Used Vehicle Floorplan Swing Line Lenders, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

**10.13 Replacement of Lenders.** If the Company or any other Borrower is entitled to replace a Lender pursuant to the provisions of Section 3.05, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Company may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.04) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Company shall have paid to the Administrative Agent the assignment fee specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to 100% of the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Company (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with applicable Laws; and

(e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Company to require such assignment and delegation cease to apply.

Each party hereto agrees that (a) an assignment required pursuant to this Section 10.13 may be effected pursuant to an Assignment and Assumption executed by the Company, the Administrative Agent and the assignee and (b) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to and be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided, further that any such documents shall be without recourse to or warranty by the parties thereto.

Notwithstanding anything in this Section 10.13 to the contrary, (i) any Lender that acts as an L/C Issuer may not be replaced hereunder at any time it has any Letter of Credit outstanding hereunder unless arrangements satisfactory to such Lender (including the furnishing of a backstop standby letter of credit in form and substance, and issued by an issuer, reasonably satisfactory to such L/C Issuer or the depositing of cash collateral into a cash collateral account in amounts and pursuant to arrangements reasonably satisfactory to such L/C Issuer) have been made with respect to such outstanding Letter of Credit and (ii)

the Lender that acts as the Administrative Agent may not be replaced hereunder except in accordance with the terms of Section 9.06.

**10.14 Governing Law; Jurisdiction; Etc.**

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. THE COMPANY AND EACH BORROWER IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER, ANY L/C ISSUER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO AND THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR ANY L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE COMPANY OR ANY BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. THE COMPANY AND EACH BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

**10.15 Waiver of Jury Trial.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT

NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**10.16 No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Company and each other Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the Arranger are arm's-length commercial transactions between the Borrowers and their respective Affiliates, on the one hand, and the Administrative Agent and the Arranger, on the other hand, (B) each of the Company and the other Borrowers has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each of the Company and the other Borrowers is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent and the Arranger each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Company, any other Borrower or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent nor the Arranger has any obligation to the Company, any other Borrower or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent and the Arranger and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company and the other Borrowers and their respective Affiliates, and neither the Administrative Agent nor the Arranger has any obligation to disclose any of such interests to the Company, any other Borrower or any of their respective Affiliates. To the fullest extent permitted by law, each of the Company and the other Borrowers hereby waives and releases any claims that it may have against the Administrative Agent and the Arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

**10.17 Electronic Execution; Electronic Records; Counterparts.** This Agreement, any Loan Document and any other Communication, including Communications required to be in writing (including without limitation Assignment and Assumptions, amendments or other modification modifications, Revolving Committed Loan Notices, Revolving Swing Line Loan Notices, New Vehicle Floorplan Committed Loan Notices, New Vehicle Floorplan Swing Line Loan Notices, Used Vehicle Floorplan Committed Loan Notices, Used Vehicle Floorplan Swing Line Loan Notices, waivers and consents), may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each of the Loan Parties and each of the Administrative Agent, and the Lender Parties agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on such Person to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of such Person enforceable against such Person in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Administrative Agent and each of the Lender Parties may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record ("Electronic Copy"), which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, neither the Administrative Agent, any L/C Issuer nor any Swingline Lender is under any obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by such Person pursuant to procedures approved by it;



provided, further, without limiting the foregoing, (a) to the extent the Administrative Agent, any L/C Issuer and/or any Swingline Lender has agreed to accept such Electronic Signature, the Administrative Agent and each of the Lender Parties shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Loan Party and/or any Lender Party without further verification and (b) upon the request of the Administrative Agent or any Lender Party, any Electronic Signature shall be promptly followed by such manually executed counterpart. For purposes hereof, “Electronic Record” and “Electronic Signature” shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

Neither the Administrative Agent, any L/C Issuer nor any Swingline Lender shall be responsible for or have any duty to ascertain or inquire into the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document (including, for the avoidance of doubt, in connection with the Administrative Agent’s, any L/C Issuer’s or any Swingline Lender’s reliance on any Electronic Signature transmitted by telecopy, emailed .pdf or any other electronic means). The Administrative Agent, any L/C Issuer and any Swingline Lender shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any Communication (which writing may be a fax, any electronic message, Internet or intranet website posting or other distribution or signed using an Electronic Signature) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof).

Each of the Loan Parties and each Lender Party hereby waives (i) any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement or any other Loan Document based solely on the lack of paper original copies of this Agreement and/or such other Loan Document, and (ii) waives any claim against the Administrative Agent, each Lender Party and each Related Party for any liabilities arising solely from the Administrative Agent’s and/or any Lender Party’s reliance on or use of Electronic Signatures, including any liabilities arising as a result of the failure of the Loan Parties to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

**10.18 USA PATRIOT Act.** Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Company and the other Borrowers that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies the Company and the other Borrowers, which information includes the name and address of the Company and the other Borrowers and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Company and each other Borrower in accordance with the Act. The Company and each other Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Act.

**10.19 Designated Senior Debt.** Each party acknowledges and agrees that the Indebtedness under the Loan Documents is “Designated Senior Debt” (or any similar term) under, and as defined in, any agreements evidencing Subordinated Indebtedness.

**10.20 Keepwell.** Each Borrower that is a Qualified ECP Guarantor at the time the joint and several liability of any Specified Loan Party (pursuant to Section 2.24 or 2.25, if applicable), or the Guaranty or the grant of a Lien under the Loan Documents, in each case, by any Specified Loan Party, becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Borrower’s obligations and undertakings under this Article X voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Borrower under this Section shall remain in full force and effect until the

Obligations have been indefeasibly paid and performed in full. Each Borrower intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a “keepwell, support or other agreement” for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

**10.21 Acknowledgement and Consent to Bail-In of Affected Financial Institutions.** Solely to the extent any Lender or L/C Issuer that is an Affected Financial Institution is a party to this Agreement and notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender or L/C Issuer that is an Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender or L/C Issuer that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

**10.22 Acknowledgement Regarding Any Supported QFCs.** To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, “QFC Credit Support”, and each such QFC, a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties

with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 10.22, the following terms have the following meanings:

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Covered Entity” means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

*[Signature pages follow.]*

**SECOND AMENDMENT TO  
MASTER LOAN AGREEMENT**

THIS SECOND AMENDMENT TO MASTER LOAN AGREEMENT (this "Amendment") is entered into as of June 1, 2022, by and between ATLANTA REAL ESTATE HOLDINGS L.L.C., a Delaware limited liability company, ASBURY JAX FORD, LLC, a Delaware limited liability company, COGGIN CARS L.L.C., a Delaware limited liability company, WTY MOTORS, L.P., a Delaware limited partnership, Q AUTOMOTIVE BRANDON FL, LLC, a Delaware limited liability company, ASBURY ST. LOUIS M L.L.C., a Delaware limited liability company, ASBURY ATLANTA CHEV, LLC, a Delaware limited liability company, and ASBURY GEORGIA TOY, LLC, a Delaware limited liability company (each referred to herein individually and collectively as "Borrower"), and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association (together with its successors and assigns, "Lender").

**RECITALS**

A. Borrower is currently indebted to Lender pursuant to the terms and conditions of that certain Master Loan Agreement between Borrower and Lender dated as of November 16, 2018, as amended from time to time (the "Loan Agreement").

B. Lender and Borrower have agreed to certain changes in the terms and conditions set forth in the Loan Agreement and have agreed to amend the Loan Agreement to reflect said changes.

C. All terms used but not defined herein shall have the meanings provided in the Loan Agreement.

NOW, THEREFORE, with the foregoing recitals incorporated by reference and made a part hereof, and intending to be legally bound, and for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**1. AMENDMENT TO LOAN AGREEMENT.**

1.1. The Loan Agreement is hereby amended by adding the following definitions:

"Benchmark Floor" means a rate of interest equal to zero percent (0%).

"Daily Simple SOFR" means, with respect to any day (a "SOFR Rate Day"), a rate per annum equal to SOFR for the day (such day, the "SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator's Website; provided, however, that if Daily Simple SOFR determined as provided above would be less than the Benchmark Floor, then Daily Simple SOFR shall be deemed to be the Benchmark Floor. If by 5:00 p.m. (New York City time) on the second (2<sup>nd</sup>) U.S. Government Securities Business Day immediately following any SOFR

Determination Day, SOFR in respect of such SOFR Determination Day has not been published on the SOFR Administrator's Website and a Benchmark Replacement Date with respect to Daily Simple SOFR has not occurred, then SOFR for such SOFR Determination Day will be SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which SOFR was published on the SOFR Administrator's Website; provided that any SOFR determined pursuant to this sentence shall be utilized for purposes of calculation of Daily Simple SOFR for no more than three (3) consecutive SOFR Rate Days.

"Federal Reserve Business Day" means any day that is not a Saturday, Sunday or other day on which the Federal Reserve Bank of New York is closed.

"Prime Rate" means at any time the rate of interest most recently announced within Bank at its principal office as its prime rate, with the understanding that the Prime Rate is one of Bank's base rates and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto, and is evidenced by the recording thereof after its announcement in such internal publication or publications as Bank may designate; provided, however, that any borrowings hereunder accruing interest determined in relation to the Prime Rate shall not be less than one percent (1.0%) at any time, regardless of fluctuations in the Prime Rate that may cause the rate of interest applicable to the Note to be less than one percent (1.0%).

"SOFR" means a rate per annum equal to the secured overnight financing rate as administered by the SOFR Administrator.

"SOFR Administrator" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"SOFR Administrator's Website" means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"SOFR Loan" means a Loan, or portion thereof, during any period in which it bears interest at a rate based upon SOFR.

"U.S. Government Securities Business Day" means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association, or any successor thereto, recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

1.2 The Loan Agreement is hereby amended by deleting the definition of "Applicable Margin" from Section 1.1 in its entirety and inserting the following new definition of "Applicable Margin" in lieu thereof:

"Applicable Margin" means:

(a) as to any portion of any Loan that is a LIBOR Loan or a SOFR Loan, the following percentages per annum, based on the Consolidated Total Lease Adjusted Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent of the Syndication Loan Agreement pursuant to the Syndication Loan Agreement:

(i) If the Consolidated Total Lease Adjusted Leverage Ratio is less than 2.75 to 1.00, the Applicable Margin shall be 1.50% per annum.

(ii) If the Consolidated Total Lease Adjusted Leverage Ratio is less than 3.50 to 1 but greater than or equal to 2.75 to 1.00, the Applicable Margin shall be 1.75% per annum.

(iii) If the Consolidated Total Lease Adjusted Leverage Ratio is greater than or equal to 3.50 to 1, the Applicable Margin shall be 1.85% per annum.

(b) Any increase or decrease in the Applicable Margin resulting from a change in the Consolidated Total Lease Adjusted Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered to the Administrative Agent of the Syndication Loan Agreement pursuant to the Syndication Loan Agreement; provided, however, that (a) if a Compliance Certificate is not delivered when due in accordance with the Syndication Loan Agreement, then the Applicable Margin shall be 1.85% for a LIBOR Loan and 1.95% for a SOFR Loan as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and shall remain in effect until the date on which such Compliance Certificate is delivered and (b) the Applicable Margin in effect from the date hereof through the first Business Day of the calendar month immediately succeeding the date the Compliance Certificate with respect to the fiscal quarter ended March 31, 2022 is delivered (or, if not timely delivered, the date such compliance certificate is required to be delivered) shall be 1.85% for a LIBOR Loan and 1.95% for a SOFR Loan.”

1.3 The Loan Agreement is hereby amended by deleting Section 2.2 in its entirety and substituting the following new Section 2.2 in lieu thereof:

“Interest. Each Borrower agrees to pay interest in respect of all unpaid principal amounts of the Loan from the respective dates such principal amounts are advanced until paid (whether at stated maturity, on acceleration or otherwise) at (a) from November 16, 2018 through and including May 31, 2022, the Applicable Margin for such LIBOR Loan plus LIBOR. Such interest rate shall be fixed for each LIBOR Period for which it is determined and shall apply for that Loan; and, (b) as of June 1, 2022 and thereafter, the Applicable Margin plus Daily Simple SOFR plus 0.10%.”

1.4 The Loan Agreement is hereby amended by adding the following new Section 2.10:

“**2.10. Taxes and Regulatory Costs**. Borrower shall pay to Bank immediately upon demand, in addition to any other amounts due or to become due hereunder, any and all (i) withholdings, interest equalization taxes, stamp taxes or other taxes (except income and franchise taxes) imposed by any domestic or foreign

governmental authority and related in any manner to SOFR or Daily Simple SOFR , and (ii) costs, expenses and liabilities arising from or in connection with reserve percentages prescribed by the Board of Governors of the Federal Reserve System (or any successor) for "Eurocurrency Liabilities" (as defined in Regulation D of the Board of Governors of the Federal Reserve System, as amended), assessment rates imposed by the Federal Deposit Insurance Corporation, or similar requirements or costs imposed by any domestic or foreign governmental authority or resulting from compliance by Bank with any request or directive (whether or not having the force of law) from any central bank or other governmental authority and related in any manner to SOFR or Daily Simple SOFR and (iii) taxes, stamp taxes, and insurance payable by reason of the execution and delivery of the Note, the Loan Agreement, and any loan documents. In determining which of the foregoing are attributable to any SOFR or Daily Simple SOFR option available to Borrower hereunder, any reasonable allocation made by Bank among its operations shall be conclusive and binding upon Borrower.”

1.5 The Loan Agreement is hereby amended by adding the following new Section 2.11:

“**2.11. Inability to Determine Interest Rates; Illegality.** Subject to the Benchmark Replacement Provisions below, if Bank determines (any determination of which shall be conclusive and binding on Borrower) that either (i) Daily Simple SOFR cannot be determined pursuant to the definition thereof other than as a result of a Benchmark Transition Event (an “Inability Determination”) or (ii) any law has made it unlawful, or that any governmental authority has asserted that it is unlawful, for Bank to make or maintain an advance based on SOFR or Daily Simple SOFR , or to determine or charge interest rates based upon SOFR or Daily Simple SOFR (an “Illegality Determination”), then Bank will so notify Borrower. The outstanding principal balance of the Note shall bear interest (computed on the basis of a 360-day year, actual days elapsed) at a fluctuating rate per annum determined by Bank to be equal to the Prime Rate in effect from time to time, from the date of an Inability Determination or an Illegality Determination until Bank revokes such Inability Determination or notifies Borrower that the circumstances giving rise to such Illegality Determination no longer exist, as applicable. When interest is determined in relation to the Prime Rate, each change in the rate of interest hereunder shall become effective on the date each Prime Rate change is announced within Bank. Notwithstanding any of the foregoing to the contrary, if a Benchmark Replacement is subsequently determined in accordance with applicable Benchmark Replacement Provisions, that Benchmark Replacement, plus any applicable margin, will become effective on the Benchmark Replacement Date and will then supersede the Prime Rate and margin determined in accordance with this provision.

#### BENCHMARK REPLACEMENT PROVISIONS:

Notwithstanding anything to the contrary contained in the Note or in any related loan document (for the purposes of these Benchmark Replacement Provisions, a swap agreement by and between Borrower and Bank or any of its affiliates is not a loan document):

(a) **Benchmark Replacement.** If a Benchmark Transition Event occurs, the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes under the Note or under any related loan document.

Any Benchmark Replacement will become effective on the applicable Benchmark Replacement Date without any further action or consent of Borrower.

(b) Benchmark Replacement Conforming Changes. Bank will have the right to make Benchmark Replacement Conforming Changes from time to time and any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of Borrower.

(c) Notices; Standards for Decisions and Determinations. Bank will promptly notify Borrower of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by Bank pursuant to these Benchmark Replacement Provisions, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and will be made in its sole discretion and without Borrower consent.

(d) Certain Defined Terms. As used in the Note, each of the following capitalized terms has the meaning given to such term below:

(i) 'Benchmark' means, initially, Daily Simple SOFR; provided, however, that if a Benchmark Transition Event has occurred with respect to Daily Simple SOFR or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has become effective pursuant to the provisions of the Note.

(ii) 'Benchmark Administrator' means, initially, the SOFR Administrator or any successor administrator of the then-current Benchmark or any insolvency or resolution official with authority over such administrator.

(iii) 'Benchmark Replacement' means the sum of: (A) the alternate rate of interest that has been selected by Bank as the replacement for the then-current Benchmark; and (B) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by Bank, in each case, giving due consideration to (x) any selection or recommendation by the Relevant Governmental Body at such time for a replacement rate, the mechanism for determining such a rate, the methodology or conventions applicable to such rate, or the spread adjustment, or method for calculating or determining such spread adjustment, for such rate, or (y) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to the then-current Benchmark, the methodology or conventions applicable to such rate, or the spread adjustment, or method for calculating or determining such spread adjustment, for such alternate rate for U.S. dollar-denominated syndicated or bilateral credit facilities at such time; provided, however, that if the Benchmark Replacement as determined as provided above would be less than the



Benchmark Floor, then the Benchmark Replacement shall be deemed to be the Benchmark Floor, subject to any other applicable floor rate provision.

(iv) ‘Benchmark Replacement Conforming Changes’ means any technical, administrative or operational changes (including, without limitation, changes to the timing and frequency of determining rates and making payments of interest, prepayment provisions and other technical, administrative or operational matters) that Bank decides (in consultation with Borrower) may be appropriate to reflect the adoption and implementation of a Benchmark Replacement and to permit the administration thereof by Bank.

(v) ‘Benchmark Replacement Date’ means the date specified by Bank in a notice to Borrower following a Benchmark Transition Event.

(vi) ‘Benchmark Transition Event’ means the occurrence of one or more of the following events with respect to the then-current Benchmark: a public statement or publication of information by or on behalf of the Benchmark Administrator or a regulatory supervisor for the Benchmark Administrator announcing that (A) the Benchmark Administrator has ceased or will cease to provide the Benchmark permanently or indefinitely or (B) the Benchmark is no longer, or as of a specified future date will no longer be, representative of underlying markets.

‘Relevant Governmental Body’ means the Board of Governors of the Federal Reserve System and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System and/or the Federal Reserve Bank of New York or any successor thereto.”

2. **FULL FORCE AND EFFECT.** Except as specifically provided herein, all terms and conditions of the Loan Agreement remain in full force and effect, without waiver or modification. This Amendment and the Loan Agreement shall be read together, as one document.

3. **REAFFIRMATION.** Borrower hereby remakes all representations and warranties contained in the Loan Agreement and reaffirms all covenants set forth therein. Borrower further certifies that as of the date of this Amendment there exists no Event of Default as defined in the Loan Agreement, nor any condition, act or event which with the giving of notice or the passage of time or both would constitute any such Event of Default.

(signatures on following pages)

**IN WITNESS WHEREOF**, the parties have executed this Second Amendment to Master Loan Agreement as of June 1, 2022.

Properties 1, 2, 3, 4, 10, 11 and 12

ATLANTA REAL ESTATE HOLDINGS L.L.C., a Delaware limited liability company

By: /s/ Karen Reid

Name: Karen Reid

Title: Vice President and Treasurer

Property 5

ASBURY JAX FORD, LLC, a Delaware limited liability company

By: /s/ Karen Reid

Name: Karen Reid

Title: Vice President and Treasurer

Property 6

COGGIN CARS L.L.C., a Delaware limited liability company

By: /s/ Karen Reid

Name: Karen Reid

Title: Vice President and Treasurer

Property 13

WTY MOTORS, L.P., a Delaware limited partnership

By: Asbury Tampa Management L.L.C., its general partner

By: /s/ Karen Reid

Name: Karen Reid

Title: Vice President and Treasurer

[signatures continue on following page]

Property 14

Q AUTOMOTIVE BRANDON FL, LLC, a Delaware limited liability company

By: /s/ Karen Reid

Name: Karen Reid

Title: Vice President and Treasurer

Property 7

ASBURY ST. LOUIS M L.L.C., a Delaware limited liability company

By: /s/ Karen Reid

Name: Karen Reid

Title: Vice President and Treasurer

Property 9

ASBURY ATLANTA CHEV, LLC, a Delaware limited liability company

By: /s/ Karen Reid

Name: Karen Reid

Title: Vice President and Treasurer

Property 8

ASBURY GEORGIA TOY, LLC, a Delaware limited liability company

By: /s/ Karen Reid

Name: Karen Reid

Title: Vice President and Treasurer

**Accepted in Winston-Salem, North Carolina:**

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: /s/ Chad McNeill

Name: Chad McNeill

Title: Senior Vice President

### THIRD AMENDMENT TO CREDIT AGREEMENT

This **THIRD AMENDMENT TO CREDIT AGREEMENT** (this "Amendment"), dated as of May 25, 2022 (the "Third Amendment Effective Date") is by and among **ASBURY AUTOMOTIVE GROUP, INC.**, a Delaware corporation ("Company"), certain Subsidiaries of the Company party to the Credit Agreement (as defined below), as borrowers (each such Subsidiary, a "Borrower" and collectively, the "Borrowers"), certain Subsidiaries of the Company, as guarantors (each such Subsidiary, a "Subsidiary Guarantor" and collectively, the "Subsidiary Guarantors" and, together with the Company, each, a "Guarantor" and, collectively, the "Guarantors"), and **BANK OF AMERICA, N.A.**, as lender (the "Lender") under that certain Credit and Security Agreement dated as of September 26, 2013 (as amended, restated, supplemented or otherwise modified prior to the date hereof, the "Existing Credit Agreement"). Capitalized terms used but not defined in this Amendment shall have the meanings that are set forth in the Amended Credit Agreement (as defined herein).

#### W I T N E S S E T H:

**WHEREAS**, Company, Borrowers and the Lender desire to amend certain provisions of the Credit Agreement on the terms and conditions contained herein; and

**WHEREAS**, the Lender is willing to agree to such amendments on the terms, subject to the conditions and to the extent set forth herein

**NOW, THEREFORE**, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

#### SECTION 1 AMENDMENTS

1.1 **Amendments to Credit Agreement.** Simultaneously with the Third Amendment Effective Date (as defined herein), the parties hereby agree that:

(a) the Existing Credit Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text), each as set forth in the pages of a conformed copy of the Existing Credit Agreement, as amended hereby, attached as Annex A hereto (as so amended, the "Amended Credit Agreement" and the Amended Credit Agreement as otherwise amended, restated, supplemented or otherwise modified from time to time on or after the date hereof, the "Credit Agreement"); and

(b) This Amendment is not a novation of the Existing Credit Agreement or of any credit facility or guaranty provided thereunder or in respect thereof. Notwithstanding that the cover page of the Amended Credit Agreement is dated "as of September 26, 2013" and Section 4.01 of the Amended Credit Agreement attached hereto contains those conditions which were applicable to the initial Closing Date of September 26, 2013, the changes to the Existing Credit Agreement effected by this Amendment shall be effective as of the satisfaction to the conditions to effectiveness set forth in Section 2.1 of this Amendment. The signature pages contained may be left off of the Amended Credit Agreement

#### SECTION 2. CONDITIONS PRECEDENT TO EFFECTIVENESS

2.1 The effectiveness of this Amendment is conditioned upon the Bank's receipt of the following items, in form and content acceptable to the Bank:

- (a) executed counterparts of this Amendment from each Borrower, each Guarantor and Lender.

### SECTION 3. MISCELLANEOUS

3.1 **Binding Effect.** This Amendment shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of Lender.

3.2 **Severability.** In case any provision in or obligation hereunder shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

3.3 **Effect on Credit Agreement.** Except as specifically amended by this Amendment, the Credit Agreement shall remain in full force and effect and is hereby ratified and confirmed. The parties agree that in the event of any conflict between this Amendment and the provisions of the Credit Agreement, this Amendment shall control.

3.4 **No Waiver.** The execution, delivery and performance of this Amendment shall not, except as expressly provided herein, constitute a waiver of any provision of, or operate as a waiver of any right, power or remedy of the Lender under the Credit Agreement. This Amendment is limited to the matters expressly referred to herein and shall not constitute an amendment or waiver of, or an indication of the Lender's willingness to amend or waive, any other provisions of the Credit Agreement or the same provisions for any other date or purpose.

3.5 **Headings.** Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

3.6 **GOVERNING LAW.** THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

3.7 **Counterparts.** This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are attached to the same document. Delivery of an executed signature page of this Amendment by facsimile transmission or electronic mail shall be as effective as delivery of a manually executed counterpart hereof.

*(Signature Pages Follow)*

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**BORROWERS:**

**ATLANTA REAL ESTATE HOLDINGS L.L.C.  
COGGIN CHEVROLET L.L.C.  
CROWN GDO L.L.C.  
MCDAVID FRISCO-HON, L.L.C.  
MCDAVID HOUSTON-NISS, L.L.C.  
PREMIER NSN L.L.C.  
ASBURY AUTOMOTIVE ARKANSAS L.L.C.  
ASBURY AUTOMOTIVE ATLANTA L.L.C.  
ASBURY AUTOMOTIVE TAMPA, L.P.  
ASBURY AUTOMOTIVE ARKANSAS  
DEALERSHIP HOLDINGS L.L.C.  
NP FLM L.L.C.  
CN MOTORS L.L.C.  
C&O PROPERTIES, LTD.**

By: /s/ Karen Reid  
Name: Karen Reid  
Title: VP Corporate Treasurer

**GUARANTORS:**

**ASBURY AUTOMOTIVE GROUP, INC.  
ASBURY ATLANTA INFINITI L.L.C.  
ASBURY ATLANTA VB L.L.C.  
PRECISION NISSAN, INC.  
TAMPA HUND, L.P.**

By: /s/ Karen Reid  
Name: Karen Reid  
Title: VP Corporate Treasurer



**Amended Credit Agreement**

See attached.



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**CREDIT AGREEMENT**

Dated as of September 26, 2013

among

**ASBURY AUTOMOTIVE GROUP, INC.,**  
as the Company,

**CERTAIN OF ITS SUBSIDIARIES,**  
as Borrowers,

and

**BANK OF AMERICA, N.A.,**  
as Lender

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## CREDIT AGREEMENT

This CREDIT AGREEMENT ("Agreement") is entered into as of September 26, 2013, among ASBURY AUTOMOTIVE GROUP, INC., a Delaware corporation (the "Company"), certain Subsidiaries of the Company party hereto as borrowers pursuant to Section 2.10 (each such Subsidiary, a "Borrower" and collectively, the "Borrowers") and BANK OF AMERICA, N.A., as lender (the "Lender").

**WHEREAS**, the Company and the Borrowers have requested that the Lender make loans and other financial accommodations to the Borrowers in an aggregate amount of up to \$75,000,000.00.

**WHEREAS**, the Lender has agreed to make such loans and other financial accommodations to the Loan Parties on the terms and subject to the conditions set forth herein.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

### ARTICLE I. DEFINITIONS AND ACCOUNTING TERMS

**1.01 Defined Terms.** As used in this Agreement, the following terms shall have the meanings set forth below:

"Added Property" has the meaning specified in the definition of "Collateral Substitution".

"Adjusted FIRREA Appraisal Value" means, with respect to a Financed Property, the value set forth for such Financed Property in the most recent FIRREA Appraisal, as accepted by the Lender following its internal review and, if applicable, adjustment thereof by the Lender, based on criteria and factors then generally used and considered by Lender in determining the value of similar real estate properties and any applicable rules or regulations adopted by any Governmental Authority.

"Affiliate" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agreement" has the meaning specified in the introductory paragraph hereto.

"Applicable Rate" means a per annum rate equal to:

- (a) with respect to ~~Eurodollar Rate~~Daily Simple SOFR Loans, 1.50%; and
- (b) with respect to Base Rate Loans, 0.50%.

"Attributable Indebtedness" means, on any date, (a) in respect of any capital lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a capital lease.

"Audited Financial Statements" means the audited consolidated balance sheet of the Company and its Subsidiaries for the fiscal year ended December 31, 2012, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year of the Company and its Subsidiaries, including the notes thereto.

“Automatic Debit Date” means the first Business Day of a calendar month.

“Availability Period” means the period from and including the Closing Date to the earliest of (i) the date that is ninety (90) days after the Closing, (ii) the date of termination of the Commitment pursuant to Section 2.04~~2.03~~, and (iii) the date of termination of the commitment of Lender to make Loans pursuant to Section 8.02.

“Bank of America” means Bank of America, N.A. and its successors.

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate,” ~~and (c) the Eurodollar Rate~~ Daily Simple SOFR plus 1.00%, and (d) 1.00%. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change. If the Base Rate is being used as an alternate rate of interest pursuant to Section 3.03 hereof, then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above.

“Base Rate Loan” means a Loan that bears interest based on the Base Rate.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. §1010.230.

“Borrower” and “Borrowers” each has the meaning specified in the introductory paragraph hereto.

“Borrowings” means a borrowing consisting of simultaneous Loans of the same Type made by the Lender pursuant to Section 2.01.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Lender’s Office is located ~~and, if such day relates to any Eurodollar Rate Loan, means any such day that is also a London Banking Day.~~

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Closing Date” means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 9.01.



“Code” means the Internal Revenue Code of 1986.

“Collateral” means, collectively, the interests in real property, fixtures, related real property interests, related contracts and proceeds of the foregoing in which a Lien is granted or purported to be granted pursuant to the Mortgages.

“Collateral Substitution” means the removal of all or a portion of a Financed Property (such Financed Property or portion thereof, a “Removed Property”) from the Property Pool (and the release of any Liens of the Lender on such Removed Property and any Collateral related to such Removed Property, as applicable) substantially simultaneously with, and in any event on the same day as, the addition of a different Financed Property (the “Added Property”) to the Property Pool; provided that, (i) there shall exist no Default or Event of Default at the time of any such Collateral Substitution, (ii) any such Collateral Substitution shall be subject to satisfaction of those requirements set forth in Section 4.02 and such Added Property (and any Collateral related to such property) shall be subject to a Mortgage and Real Estate Support Documents, (iii) in the event any Subsidiary which owns or leases the real property proposed to be Added Property in connection with such Collateral Substitution is not an existing Borrower or Subsidiary Guarantor, as the case may be, such Subsidiary shall have complied with the provisions of Section 6.05 prior to or substantially simultaneously with the addition of such proposed Added Property to the Property Pool, (iv) the Company shall have paid all fees related to any such Collateral Substitution, and (v) in the event of a Collateral Substitution for a portion of a Financed Property, such substitution shall be effected in connection with a Permitted Financed Property Disposition. Upon the effectiveness of a Collateral Substitution, the respective Removed Property shall immediately cease to be a Financed Property.

“Collateral Substitution Test” shall mean:

(i) with respect to a Collateral Substitution of an entire Financed Property, that the Lender shall have received a FIRREA Appraisal of the Added Property dated no more than six (6) months before such Collateral Substitution which evidences an Adjusted FIRREA Appraisal Value of the Added Property equal to at least the Initial FIRREA Appraisal Value of the Initial Financed Property associated with the Related Loan applicable to such Removed Property; and

(ii) with respect to a Collateral Substitution of a portion of a Financed Property (such Financed Property (including the respective Removed Property and the respective Remaining Property) being referred to as, the “Subject Financed Property”), that:

(x) the Lender shall have received FIRREA Appraisals dated no more than six (6) months before such Collateral Substitution of (1) the portion of the Financed Property that will remain as Collateral after Collateral Substitution (the “Remaining Property”) and (2) any Added Property proposed to be added to the Property Pool in connection with such Collateral Substitution; and

(y) (1) the Adjusted FIRREA Appraisal Value of the Remaining Property, plus the Adjusted FIRREA Appraisal Value of any such Added Property shall be equal to at least the Initial FIRREA Appraisal Value of the Initial Financed Property associated with the Related Loan applicable to such Subject Financed Property or (2) in the event the proportionate amount of the Initial Adjusted FIRREA Appraisal Value associated with such Removed Property is readily identifiable by the applicable initial FIRREA Appraisal for such Subject Financed Property (as determined by Lender), the Adjusted FIRREA Appraisal Value of any such Added Property shall be equal to at least such readily identifiable proportionate amount of such Initial FIRREA Appraisal Value (and in

which case of this clause (2), the FIRREA Appraisal referenced in clause (x)(1) above shall not be required to be delivered to Lender).

“Commitment” means the Lender’s obligation to make Loans to the Borrowers pursuant to Section 2.01 in an aggregate principal amount not to exceed \$75,000,000.

“Company” has the meaning specified in the introductory paragraph hereto.

“Conforming Changes” means, with respect to the use, administration of or any conventions associated with SOFR or any proposed Successor Rate or Daily Simple SOFR, as applicable, any conforming changes to the definitions of “Base Rate”, “SOFR”, and “Daily Simple SOFR”, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definition of “Business Day”, timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of the Lender, to reflect the adoption and implementation of such applicable rate(s) and to permit the administration thereof by the Lender in a manner substantially consistent with market practice (or, if the Lender determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate exists, in such other manner of administration as the Lender determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Covered Entity” has the meaning specified in Section 9.20.

“Daily Simple SOFR” means:

(a) with respect to a Daily Simple SOFR Loan, the rate per annum equal to the Daily Simple SOFR Published Rate two Business Days prior to the date of determination; provided that if the rate is not published on such date of determination then Daily Simple SOFR means the Daily Simple SOFR Published Rate on the first Business Day immediately prior thereto, in each case, plus the SOFR Adjustment; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to Daily Simple SOFR Published Rate on such date;

(c) provided that if Daily Simple SOFR determined in accordance with either of the foregoing provisions (a) or (b) of this definition would otherwise be less than zero, Daily Simple SOFR shall be deemed zero for purposes of this Agreement.

“Daily Simple SOFR Loan” means a Loan that bears interest at a rate based on Daily Simple SOFR.

“Daily Simple SOFR Published Rate” with respect to any applicable determination date means the SOFR published on such date on the Federal Reserve Bank of New York’s website (or any successor source).

“Daily Simple SOFR Replacement Date” has the meaning specified in Section 3.03(b).

“Debtor Relief Laws” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means an interest rate equal to (a) the Base Rate plus (b) the Applicable Rate, if any, applicable to Base Rate Loans plus (c) 2% per annum; provided, however, that with respect to a ~~Eurodollar Rate~~ Daily Simple SOFR Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum.

“Delaware LLC” means any limited liability company organized or formed under the laws of the State of Delaware.

“Delaware Divided LLC” means any Delaware LLC which has been formed upon consummation of a Delaware LLC Division.

“Delaware LLC Division” means the statutory division of any Delaware LLC into two or more Delaware LLCs pursuant to Section 18-217 of the Delaware Limited Liability Company Act.

“Designated Jurisdiction” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith and including any disposition of property to a Delaware Divided LLC or pursuant to a Delaware LLC Division.

“Disposition Proceeds” means, with respect to any Disposition, as at the date of such Disposition, the sum of the following (without duplication): (i) the amount of any cash and fair market value of other property received as consideration in connection with such Disposition, (ii) all consideration amounts in the form of earnouts and other contingent obligations that should be recorded on the financial statements of the Company and its Subsidiaries in accordance with GAAP in connection with such Disposition, (iii) all amounts received in respect of covenants not to compete, consulting agreements that should be recorded on the financial statements of the Company and its Subsidiaries in accordance with GAAP, and other affiliated contracts in

connection with such Disposition, and (iv) the aggregate fair market value of all other consideration received by the Company or any Subsidiary in connection with such Disposition; provided that the Disposition Proceeds shall not include any amount used to pay off Liens (other than Liens created by the Loan Documents) on any property disposed of in connection with such Disposition.

“Dollar” and “\$” mean lawful money of the United States.

“Domestic Subsidiary” means any Subsidiary that is organized under the laws of any political subdivision of the United States.

“Environmental Laws” means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Company, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with the Company within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Company or any ERISA Affiliate from a Pension Plan subject to Section 4063

of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Company or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Company or any ERISA Affiliate.

**“Eurodollar Rate” means:**

~~(a) — With respect to a Eurodollar Rate Loan, the rate per annum equal to (i) the London Interbank Offered Rate (“LIBOR”) or a comparable or successor rate which rate is approved by the Lender, as published on the Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Lender from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period;~~

~~(b) — for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to LIBOR, at approximately 11:00 a.m., London time determined two Business Days prior to such date for U.S. Dollar deposits with a term of one month commencing that day; and~~

~~(c) — if the Eurodollar Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement;~~

~~provided that to the extent a comparable or successor rate is approved by the Lender in connection herewith, the approved rate shall be applied to the applicable Interest Period in a manner consistent with market practice; provided, further that to the extent such market practice is not administratively feasible for the Lender, such approved rate shall be applied to the applicable Interest Period as otherwise reasonably determined by the Lender.~~

~~A Loan bearing interest at the Eurodollar Rate may be (a) borrowed on any day (whether or not it is the first day of the applicable Interest Period) and (b) repaid or converted to a different Type of Loan on any day (whether or not it is the last day of an Interest Period) without giving rise to any additional payment for “break funding” losses.~~

~~“Eurodollar Rate Loan” means a Loan that bears interest at a rate based on clause (a) of the definition of “Eurodollar Rate.”~~

“Event of Default” has the meaning specified in Section 8.01.

“Excluded Swap Obligation” means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Loan Party of, the joint and several liability of such Loan Party for, or the grant by such Loan Party of a security interest to secure, such Swap Obligation (or any Guarantee thereof or joint and several liability therefor) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to Section 9.18 and any other “keepwell, support or other agreement” for the benefit of such Loan Party and any and all guarantees of such Loan Party’s Swap Obligations by other Loan Parties) at the time the Guarantee of such Loan Party, the joint and several liability of such Loan Party or a grant by such Loan Party of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes excluded in accordance with the first sentence of this definition. The parties hereto agree that if any Loan Party has granted a Lien on any Collateral of such Loan Party pursuant to any Security Instrument, the obligations secured by such Lien shall exclude any Excluded Swap Obligation with respect to such Loan Party, and such Security Instrument is hereby deemed amended to effect such exclusion.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of the Lender, its Lender’s Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of the Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of the Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which the Lender changes its Lender’s Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii), (a)(iii) or (c), amounts with respect to such Taxes were payable to the Lender immediately before it changed its Lender’s Office, and (c) any U.S. federal withholding Taxes imposed pursuant to FATCA.

“Facility Termination Date” means the date as of which all of the following shall have occurred: (a) the Commitment has terminated, and (b) all Obligations have been indefeasibly paid in full in cash (other than (x) contingent indemnification obligations as to which no claim has been made and (y) obligations and liabilities under Secured Hedge Agreements as to which arrangements satisfactory to the applicable Hedge Bank have been made).

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471 (b) (1) of the Code.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System ~~arranged by Federal funds brokers on such day~~, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, ~~and~~ (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Lender, and (c) if the Federal Funds Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Financed Property” means a real property parcel (and improvements related thereto) which (a) is owned in fee by a Borrower and located at or near a dealership or otherwise used or to be used by a dealership in its business, (b) is located in any state of the United States of America or the District of Columbia and (c) has been identified as a Financed Property with respect to any Loans on the applicable Loan Notice.

“FIRREA Appraisal” means an appraisal of a Financed Property that is commissioned by the Lender and satisfies the requirement of the Federal Institutions Reform, Recovery and Enforcement Act or is otherwise acceptable to the Lender in its sole discretion.

“Foreign Lender” means, in the event of an assignment pursuant to Section 9.06 any Lender that is organized under the Laws of a jurisdiction other than that in which the Company is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“Framework Agreement” means a framework agreement, in each case between the Company or any Subsidiary and a manufacturer or distributor of Vehicles.

“Franchise” means any division of a Subsidiary of the Company that holds (or the portion of the assets of such Subsidiary that constitutes) the assets of a particular franchise for the sale of New Vehicles and/or Used Vehicles. A Subsidiary may own and operate one or more than one Franchise. (By way of example, and without limiting the generality of the foregoing, Asbury Automotive St. Louis, L.L.C. is a Subsidiary that, as of the date hereof, owns a BMW Franchise and an Infiniti Franchise, among others.)

“Franchise Agreement” means any dealer franchise agreement, dealer sales and service agreement or similar agreement.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness (the “primary obligations”) payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such primary obligations, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such primary obligations of the payment or performance of such primary obligations, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such primary obligations, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such primary obligations of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any primary obligations of any primary obligor, whether or not such primary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such primary obligation to obtain any such Lien). The amount of any Guarantee (other than a Guarantee of the type described in clause (b) above) shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as reasonably determined by the guaranteeing Person in good faith. The amount of any Guarantee of the type described in clause (b) above shall be deemed to be an amount equal to the lesser of (x) the fair market value of the property subject to such Lien and (y) the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning. The term “Guarantee” shall not include endorsements of instruments for deposit or collection in the ordinary course of business.



“Guaranty” means the Guaranty Agreement made by the Guarantors in favor of the Lender, substantially in the form of Exhibit C as supplemented from time to time by execution and delivery of Joinder Agreements pursuant to Section 6.05 and as otherwise supplemented, amended, or modified from time to time.

“Guarantors” means, collectively, (a) the Company, (b) the Subsidiary Guarantors, and (c) with respect to (i) Obligations owing by any Loan Party or any Subsidiary of a Loan Party under any Swap Contract and (ii) the payment and performance by each Specified Loan Party of its obligations under its Guarantee with respect to all Swap Obligations, each Borrower.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“Hedge Bank” means any Person that, (a) at the time it enters into a Swap Contract not prohibited under Article VI or VII, is the Lender or an Affiliate of the Lender, or (b) at the time it (or its Affiliate) becomes the Lender, is a party to a Swap Contract not prohibited under Article VI or VII, in each case, in its capacity as a party to such Swap Contract.

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and, in each case, not past due for more than 60 days after the original specified due date thereof, or if such trade account payable has no specified due date, the date on which such trade account payable was created);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) capital leases and Synthetic Lease Obligations;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any capital lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date. The amount of Indebtedness of the type described in clause (e) above to the extent the recourse for such Indebtedness is limited to recourse against the property subject to the Lien described in clause (e) shall be deemed to be an amount equal to the lesser of (x) the fair market value of the property subject to such Lien and (y) the outstanding amount if indebtedness secured by such Lien. The term "Indebtedness" shall not include (x) customer deposits and interest payable thereon in the ordinary course of business or (y) indebtedness to the extent that it has been defeased or satisfied and discharged in accordance with the terms of the documents governing such indebtedness; provided that (i) to the extent the deposit of assets with the applicable holders (or trustee on behalf of such holders) is required in connection with the defeasance or satisfaction and discharge of such indebtedness, such assets are limited to cash and cash equivalents and (ii) none of the assets associated with such defeasance, or any income earned on such assets, shall be included in the calculation of any financial covenant or ratio or incurrence test hereunder, any borrowing base hereunder or the Prepayment Test Amount.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

"Indemnitees" has the meaning specified in Section 9.04(b).

"Indentures" means, collectively, (a) that certain Indenture, dated as of ~~March 26~~February 19, 2007~~2020~~ (as amended, supplemented and otherwise modified prior to the date hereof, and as further amended, supplemented or otherwise modified from time to time to the extent permitted hereunder), governing ~~those certain 7.625%~~the 4.75% Senior ~~Subordinated~~ Notes due ~~2017 in~~2030 of the ~~original principal amount of \$150,000,000, issued by~~Company, (ii) that certain Indenture, dated as of February 19, 2020 (as amended, supplemented and otherwise modified prior to the date hereof, and as further amended, supplemented or otherwise modified from time to time to the extent permitted hereunder), governing the 4.50% Senior Notes due 2028 of the Company ~~and,~~ (b) ~~(iii)~~ that certain Indenture, dated as of November ~~16~~19, 2010~~2021~~ (as amended, supplemented and otherwise modified prior to the date hereof, and as further amended, supplemented or otherwise modified from time to time to the extent permitted

hereunder), governing ~~those certain 8.375%~~ the 4.625% Senior ~~Subordinated~~ Notes due ~~2020 in the original principal amount of \$200,000,000, issued by 2029~~ of the Company, and ~~those (iv) that~~ certain ~~8.375%~~ Indenture, dated as of November 19, 2021 (as amended, supplemented and otherwise modified prior to the date hereof, and as further amended, supplemented or otherwise modified from time to time to the extent permitted hereunder), governing the 5.00% Senior ~~Subordinated~~ Notes ~~issued on June 20, 2013 and due 2020 in the original principal amount of \$100,000,000, issued by due 2032~~ of the Company.

“Information” has the meaning specified in Section 9.07.

“Initial Financed Property” means, with respect to any Related Loan, each Financed Property as it existed at the time it was financed by such Loan on the Closing Date or during the Availability Period, as applicable.

“Initial FIRREA Appraisal Value” means, with respect to any Initial Financed Property, the Adjusted FIRREA Appraisal Value applicable to such Initial Financed Property at the time the initial Related Loan was made for such Initial Financed Property.

“Interest Payment Date” means the Automatic Debit Date of each calendar month.

~~“Interest Period” means a period of approximately one month commencing on the first Business Day of each month and ending on the first Business Day of the following month.~~

“IRS” means the United States Internal Revenue Service.

“Joinder Agreement” means each Joinder Agreement, substantially in the form of Exhibit D, executed and delivered by a Subsidiary or any other Person to the Lender, pursuant to Section 6.05.

“Laws” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“Lease” means each operating lease or capital lease of all or any portion of a Financed Property, including but not limited to those leases set forth on Schedule 5.26.

“Lender” has the meaning specified in the introductory paragraph hereto.

“Lender’s Office” means, the Lender’s address and, as appropriate, account as set forth on Schedule 9.02, or such other address or account as the Lender may from time to time notify to the Company.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or

other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“Loan” has the meaning specified in Section 2.01(a).

“Loan Documents” means this Agreement, the Master Note, each Mortgage, each other Security Instrument, any Joinder Agreement and the Guaranty.

“Loan Notice” means a notice of (a) a Borrowing relating to one or more Financed Properties, or (b) a conversion of Loans from one Type to the other, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A.

“Loan Parties” means, collectively, the Company, each Borrower, each Guarantor, and each Person (other than the Lender or any landlord executing a landlord waiver) executing a Security Instrument.

~~“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.~~

“Master Note” means a master promissory note made by the Borrowers in favor of the Lender, evidencing Loans made by the Lender, substantially in the form of Exhibit B.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent), or financial condition of the Company and its Subsidiaries taken as a whole; (b) a material impairment of the rights and remedies of the Lender under any Loan Document, or of ability of the Loan Parties taken as a whole to perform their respective obligations under the respective Loan Documents to which any of them is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against the Loan Parties taken as a whole of the Loan Documents.

“Maturity Date” means the earlier of (i) September 26, 2023, (ii) the maturity date of the Syndicated Credit Agreement (as amended from time to time, including amendments which extend the maturity date thereunder) if such maturity date is earlier than August 8, 2018, (iii) May 1, 2018, if the Syndicated Credit Agreement is not refinanced, replaced or restated prior to May 1, 2018 or the maturity date of the Syndicated Credit Agreement has not been extended beyond August 18, 2018 and (iv) if the Syndicated Credit Agreement is refinanced, replaced or restated with a credit facility having a maturity date prior to September 26, 2023, or if the maturity date of the Syndicated Credit Agreement has been extended beyond August 18, 2018 but before September 26, 2023, such prior maturity date; provided, however, that, in each case, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

“Memorandum of Lease” means each memorandum of lease of all or any portion of a Financed Property.

“Mortgage Permitted Liens” means, with respect to any Financed Property, the “Permitted Liens” as defined in the Mortgage for such Financed Property.

“Mortgaged Property” means, with respect to any Financed Property, the “Mortgaged Property” as defined in the Mortgage related to such Financed Property.

“Mortgages” means, collectively, the mortgages, deeds of trust or security deeds now or hereafter encumbering any portion of any Borrower’s interests in the Financed Properties and other property as described therein in favor of, or for the benefit of, the Lender.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Company or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Multiple Employer Plan” means a Plan which has two or more contributing sponsors (including the Company or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“New Vehicle” means a Vehicle which has never been owned except by a manufacturer, distributor or dealer and has never been registered.

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Secured Hedge Agreement, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding; provided, that Obligations of a Loan Party shall exclude any Excluded Swap Obligation with respect to such Loan Party.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are

Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.05).

“Outstanding Amount” means, on any date, the aggregate outstanding principal amount of all Loans after giving effect to any borrowings and prepayments or repayments of Loans occurring on such date.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Act” means the Pension Protection Act of 2006.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, after the effective date of the Pension Act, Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“Pension Plan” means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by the Company and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“Permitted Financed Property Disposition” means a sale of a Financed Property in whole or in part by a Borrower, provided that (i) such Financed Property is sold at a time when no Default or Event of Default exists, (ii) such sale shall be on fair and reasonable terms substantially as favorable to such Borrower as would be obtainable by such Borrower at the time in an arm’s-length commercial transaction, (iii) substantially simultaneously with such sale, such Borrower shall either (x) repay to the Lender in full the entire outstanding principal balance of the Loan associated with such Financed Property and all accrued and unpaid interest and any fees associated therewith or (y) effectuate a Collateral Substitution pursuant to the terms and conditions of this Agreement, and (iv) in the event of any such Collateral Substitution, the Collateral Substitution Test shall have been met.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Company or any ERISA Affiliate or any such Plan to which the Company or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“Principal Amortization Payment Date” means, with respect to any Loan made as of the Closing Date, the first Business Day of each January, April, July and October commencing January 2, 2014, and with respect to any Loan made after the Closing Date, the first Business Day of each January, April, July and October which is more than 90 days after the date on which such Loan as made.

“Property Pool” means, collectively, as of any date, the Financed Properties constituting Collateral as of such date.

“Qualified ECP Guarantor” shall mean, at any time, each Loan Party with total assets exceeding \$10,000,000 or that qualifies at such time as an “eligible contract participant” under the Commodity Exchange Act and can cause another Person to qualify as an “eligible contract participant” at such time under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Real Estate Support Documents” means, for each Financed Property, (a) mortgagee title insurance policies (in amounts and with endorsements reasonably acceptable to the Lender and insuring over, and without exception for, any then existing or future mechanics, materialmen or similar Liens), and such surveys (certified to the Lender and applicable title insurance company), zoning letters, appraisals (including FIRREA Appraisals), environmental reports (including Phase I and if requested, Phase II environmental assessments) and other mortgage-related documents, as the Lender may reasonably request, (b) a lessee estoppel, subordination and attornment agreement in substantially the form attached hereto as Exhibit E, or such other form as the Lender may accept in its sole discretion, (c) third party consents, flood hazard certifications, and evidence of flood insurance (if required), as the Lender may reasonably request; and (d) such lessee’s affidavits and opinions of local counsel with respect to the Mortgages as the Lender may reasonably request.

“Recipient” means the Lender or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder.

“Related Loan” means, with respect to any Financed Property, (a) the Loan made with respect to such Financed Property or (b) the Loan made with respect to another Financed Property that was replaced by such Financed Property (either directly through a Collateral Substitution or indirectly through a series of successive Collateral Substitutions).

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“Remaining Property” has the meaning specified in the definition of “Collateral Substitution Test”.

“Removal Event” has the meaning specified in the definition of “Syndicated Credit Agreement”.

“Removed Property” has the meaning specified in the definition of “Collateral Substitution”.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

“Revolving Administrative Agent” has the meaning specified in the definition of Syndicated Credit Agreement.

“Responsible Officer” means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer or controller of a Loan Party and solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01, the secretary or any assistant secretary of a Loan Party and, solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Lender. Any document delivered hereunder that is signed by a Responsible Officer of a

Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Sanction(s)” means any international economic sanction administered or enforced by the United States Government (including without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“Scheduled Unavailability Date” has the meaning specified in [Section 3.03\(b\)](#).

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Secured Hedge Agreement” means any Swap Contract permitted under [Article VII](#) that is (a) entered into by and between any Loan Party and any Hedge Bank and (b) related to any Loan or portion thereof.

“Security Instruments” means, collectively or individually as the context may indicate, the Mortgages and all other agreements, instruments and other documents, whether now existing or hereafter in effect, pursuant to which any Borrower, any other Loan Party or any other Person shall grant or convey to the Lender a Lien on, or any other Person shall acknowledge any such Lien on, property as security for all or any portion of the Obligations, any other obligation under any Loan Document.

“SOFR” means the [Secured Overnight Financing Rate as administered by the Federal Reserve Bank of New York \(or a successor administrator\)](#).

“SOFR Adjustment” with respect to [Daily Simple SOFR](#) means [0.10% \(10 basis points\)](#).

“Specified Loan Party” means any Loan Party that is not then an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to [Section 9.18](#)).

“Subordination and Attornment Agreement” has the meaning specified in [Section 7.06](#).

“Subsequent Provision” means (a) any amendment, consent to, or waiver of any covenant or agreement contained in Article VI (Affirmative Covenants) or Article VII (Negative Covenants) of the Syndicated Credit Agreement which has been incorporated by reference into Article VI (Affirmative Covenants) or Article VII (Negative Covenants) or (b) any covenant or agreement that is added to Article VI (Affirmative Covenants) or Article VII (Negative Covenants) of the Syndicated Credit Agreement, in each case after the date hereof (and including pursuant to any amendment or restatement of the Syndicated Credit Agreement), as such amended or additional covenant, or agreement is in effect on the date so amended or added (without giving effect to any subsequent amendment or other modification thereof unless the terms thereof qualify as a “Subsequent Provision” hereunder); provided that, in the event Bank of America shall have received any amendment, consent, waiver or work fee in its capacity as a “Lender” under the Syndicated Credit Agreement in connection with such amendment, consent, amendment and restatement, waiver or agreement, (a “Syndicated Lender Fee”), in order for such amendment, consent, amendment and restatement, waiver or agreement to be considered a “Subsequent Provision” hereunder, the Lender shall have received fees equal to (x) fifty percent (50%) times (y) the basis points used in calculating the Syndicated Lender Fee times (z) the Outstanding Amount, received by Bank of America (in its capacity as a lender) under the



Syndicated Credit Agreement; provided further however, (A) such fees shall not exceed five (5) basis points of the Outstanding Amount and (B) such fees shall only be required to be paid in the case when such Subsequent Provision provides an accommodation to or is otherwise less restrictive on the Company and its Subsidiaries than the covenants and agreements in effect immediately prior to such Subsequent Provision.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Company.

“Subsidiary Guarantors” means, collectively, all Subsidiaries executing the Guaranty on the Closing Date and all other Subsidiaries that enter into a Joinder Agreement as a Subsidiary Guarantor.

“Successor Rate” has the meaning specified in Section 3.03(b).

“Swap Contract” means any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement.

“Swap Obligations” means with respect to any Guarantor any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include the Lender or any Affiliate of the Lender).

“Syndicated Credit Agreement” means that certain Second Amended and Restated Credit Agreement dated as of July 25, 2016 among the Company, as a Borrower, certain of its Subsidiaries as Vehicle Borrowers, Bank of America, N.A., as Administrative Agent (in such capacity, the “Revolving Administrative Agent”), Revolving Swing Line Lender, New Vehicle Floorplan Swing Line Lender and Used Vehicle Floorplan Swing Line Lender and L/C Issuer, and the other lenders party thereto, as the same Second Amended and Restated Credit Agreement may be amended, amended and restated, modified, supplemented or replaced from time to time, provided, that, at the time upon which Bank of America (i) is no longer the Revolving Administrative Agent or (ii) is no longer the left-lead arranger (either event of clause (i) or (ii) above being hereinafter referred to as a “Removal Event”) under such facility (including any

such replacement facility), any references herein to the Syndicated Credit Agreement shall be to the Syndicated Credit Agreement as in effect immediately prior to such Removal Event. In the event that (x) all outstanding loans and other obligations under the then existing Syndicated Credit Agreement have been paid in full (other than (1) contingent indemnification obligations as to which no claim has been made and (2) obligations and liabilities under secured hedge agreements as to which arrangements satisfactory to the applicable hedge bank have been made), (y) all commitments under such Syndicated Credit Agreement have terminated and (z) such Syndicated Credit Agreement has not been replaced by a credit agreement that constitutes a Syndicated Credit Agreement (such event satisfying all of conditions (x), (y) and (z) being referred to as an “SCA Termination Event”), any references herein to the Syndicated Credit Agreement shall be to the Syndicated Credit Agreement as in effect immediately prior to such SCA Termination Event.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Third Amendment” means that certain Third Amendment to Credit Agreement, dated as of the Third Amendment Effective Date, by and among the Borrowers, the Guarantors, and the Lender.

“Third Amendment Effective Date” means May 25, 2022.

“Type” means with respect to a Loan, its character as a Base Rate Loan or a ~~Eurodollar Rate~~ Daily Simple SOFR Loan.

“UCC” means the Uniform Commercial Code as in effect in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“United States” and “U.S.” mean the United States of America.

“Used Vehicle” means a Vehicle other than a New Vehicle.

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“Vehicle” means any automobile or truck approved for highway use by any State of the United States.

“2018 Real Estate Credit Agreement” means the Credit Agreement dated as of November 13, 2018 among the Company, certain of its Subsidiaries, as Borrowers, and Bank of America, N.A., as lender, as the same Credit Agreement may be amended, amended and restated, modified, supplemented or replaced from time to time.

**1.02 Other Interpretive Provisions.** With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Any capitalized terms used herein but not defined herein that are defined in the UCC shall have the respective meanings assigned to such terms in the UCC. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) Any reference herein to a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or any allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

### **1.03 Accounting Terms.**

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Company and its Subsidiaries shall be deemed to

be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Company or the Lender shall so request, the Lender and the Company shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Company shall provide to the Lender financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding anything else set forth herein, any lease that was or would have been treated as an operating lease under GAAP as in effect on the Closing Date that would become or be treated as a capital lease solely as a result of a change in GAAP after the Closing Date shall always be treated as an operating lease for all purposes and at all times under this Agreement; provided that, the Company shall nonetheless provide to the Lender financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

(c) Rounding. Any financial ratios required to be maintained by the Company pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

**1.04 Times of Day.** Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

**1.05 References to Defined Terms in the Syndicated Credit Agreement.**

- (a) The following terms shall have the meanings assigned thereto in the Syndicated Credit Agreement, as of the date hereof:
- (i) Approved Fund,
  - (ii) Permitted Liens,
  - (iii) Subordinated Indebtedness, and
  - (iv) Subordinated Indenture Indebtedness.

In the event that the Syndicated Credit Agreement is terminated for any reason, the terms specified above shall continue to have the same meanings assigned to such terms in accordance with this Section 1.05 on the date of such termination.

(b) The following terms shall have the meanings assigned thereto in the Syndicated Credit Agreement in effect from time to time (including all related defined terms referred to therein), provided that, in the event of any Removal Event, any references to such terms shall be as such terms were defined in the Syndicated Credit Agreement as in effect immediately prior to such Removal Event:

- (i) Change of Control, and
- (ii) Threshold Amount.

## 1.06 Interest Rates

(a) The Lender does not warrant, nor accept responsibility, nor shall the Lender have any liability with respect to the administration, submission or any other matter related to Daily Simple SOFR or with respect to any rate that is an alternative or replacement for or successor to any of such rate (including, without limitation, any Successor Rate) or the effect of any of the foregoing, or of any Conforming Changes. The Lender and its affiliates or other related entities may engage in transactions or other activities that affect any reference rate referred to herein, or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing) or any related spread or other adjustments thereto, in each case, in a manner adverse to the Borrowers. The Lender may select information sources or services in its reasonable discretion to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing), in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrowers or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or other action or omission related to or affecting the selection, determination, or calculation of any rate (or component thereof) provided by any such information source or service.

(b) The parties hereto agree and acknowledge that for administrative purposes the provisions in this Agreement that are amended by the Third Amendment and that relate to Obligations accruing interest at the reference interest rates, including Daily Simple SOFR, shall go into effect as of June 1, 2022, and therefore, notwithstanding anything herein to the contrary, all outstanding Loans, shall in each case during the period from the Third Amendment Effective Date through and including May 31, 2022, accrue interest at the Eurodollar Rate or Base Rate (including, if applicable, the Default Rate based on the Eurodollar Rate or the Base Rate), and not Daily Simple SOFR. Without limiting the generality of the foregoing, during the period from the Third Amendment Effective Date through and including May 31, 2022, interest shall be subject to the provisions in this Agreement (including without limitation the relevant provisions contained in Sections 1.01, 1.06, 2.05, 2.07, 3.02, 3.03 and 3.04 of this Agreement) governing the Applicable Rate, Base Rate, Base Rate Loans and Eurodollar Rate Loans (as such terms were defined in this Agreement, and as such provisions were in effect, immediately prior to giving effect to the Third Amendment).

## **ARTICLE II. THE COMMITMENTS AND LOANS**

**2.01 Loans.** Subject to the terms and conditions set forth herein, the Lender agrees to make term loans (each such loan, a “Loan”) to the Borrowers from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed the Lender’s Commitment; provided however, that, (a) each Loan shall be made to the applicable Borrower with respect to a single Financed Property identified in the Loan Notice for such Loan; (b) each Loan shall be made only on a Business Day at the time the respective Financed Property initially enters the Property Pool; (c) after giving effect to any Borrowing, the aggregate Outstanding Amount shall not exceed the Lender’s Commitment; (d) the aggregate principal amount of the applicable Loan with respect to any Financed Property (i) identified on Schedule 2.01 shall not exceed the amount indicated with respect to such property under the column “Maximum Amount” on Schedule 2.01 or (ii) included in the Property Pool pursuant to clause (e)(ii) below shall not exceed an amount equal to seventy-five percent (75%) of the Adjusted FIRREA Appraisal Value of such Financed Property; and (e) no Loan shall be advanced with respect to

any Financed Property other than those properties (i) listed on Schedule 2.01 or (ii) for which all the requirements set forth in Section 4.02(d) have been satisfied. The principal amount of each Loan outstanding hereunder from time to time shall bear interest, and the Loans shall be repayable, in each case, as herein provided. No amount of any Loan repaid or prepaid by any Borrower may be reborrowed. Loans may be Base Rate Loans or ~~Eurodollar-Rate~~Daily Simple SOFR Loans, as further provided herein. No Financed Property may be the subject of more than one Loan.

## **2.02 Borrowings, Conversions and Continuations of Loans.**

(a) Each Borrowing and each conversion of Loans from one Type to the other shall be made upon the Company's irrevocable notice to the Lender, which may be given by telephone. Each such notice must be received by the Lender not later than 1:00 p.m. (i) one Business Day prior to the requested date of any Borrowing of ~~Eurodollar-Rate~~Daily Simple SOFR Loans or of any conversion of ~~Eurodollar-Rate~~Daily Simple SOFR Loans to Base Rate Loans, and (ii) one Business Day prior to the requested date of any Borrowing of Base Rate Loans; provided that any such notice of Borrowing delivered in connection with initial funding on the Closing Date may be provided on the Closing Date. Each telephonic notice by the Company pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Lender of a written Loan Notice, appropriately completed and signed by a Responsible Officer of the Company. Each Borrowing of, conversion to or continuation of ~~Eurodollar-Rate~~Daily Simple SOFR Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof. Each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Loan Notice (whether telephonic or written) shall specify (i) whether the Company is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of ~~Eurodollar-Rate~~Daily Simple SOFR Loans, (ii) the requested date of the Borrowing or conversion, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed or converted, (iv) the Type of Loans to be borrowed or to which existing Loans are to be converted, (v) the applicable Borrower and (vi) the applicable Financed Property. If the Company fails to provide a timely Loan Notice requesting a conversion of ~~Eurodollar-Rate~~Daily Simple SOFR Loans to Base Rate Loans, such Loans shall, subject to Article III, continue as ~~Eurodollar-Rate~~Daily Simple SOFR Loans. If the Company fails to specify a Type of Loan in a Loan Notice, then the applicable Loans shall, subject to Article III, be made as, or converted to, ~~Eurodollar-Rate~~Daily Simple SOFR Loans.

(b) Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is an initial Borrowing, Section 4.01), the Lender shall make all funds available to the applicable Borrower either by (i) crediting the account of such Borrower on the books of the Lender with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Lender by the Company.

(c) ~~The Lender shall promptly notify the Company of the interest rate applicable to any Eurodollar Rate Loans upon determination of such interest rate.~~ At any time that Base Rate Loans are outstanding, the Lender shall notify the Company of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

### **2.03 Prepayments; Termination or Reduction of Commitment.**

(a) Each Borrower may, upon notice by the Company to the Lender, at any time or from time to time voluntarily prepay Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Lender not later than 1:00 p.m. on the date of prepayment of such Loans; (ii) any prepayment of Loans shall be (A) in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof, or (B) in the case of the prepayment in full of any Loan with respect to a particular Financed Property, in the aggregate outstanding amount of the Loan made in connection with such Financed Property and all accrued but unpaid interest thereon. Each such notice shall specify the date and amount of such prepayment, the Type(s) of Loans to be prepaid and the particular Financed Property relating to each Loan being prepaid. If such notice is given by the Company, the applicable Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Each such prepayment shall be applied to the remaining installments of principal of the Loans in the inverse order of maturity.

(b) If for any reason the Outstanding Amount at any time exceeds the Commitment then in effect, the Borrowers shall immediately prepay Loans in an aggregate amount equal to such excess. The Lender, in its sole discretion, shall determine which Loans (or portions thereof) are deemed prepaid by such prepayment.

### **2.04 Repayment of Loans.**

(a) Each Borrower shall make quarterly amortization payments with respect to each of its respective Loans on each Principal Amortization Payment Date. Each such quarterly amortization payment shall be in an amount equal to 1.25% of the initial principal amount of such Loan.

(b) The Borrowers shall repay to the Lender on the date of any Permitted Financed Property Disposition any amounts required to be paid as set forth in the definition of "Permitted Financed Property Disposition."

(c) The Borrowers shall repay to the Lender on the Maturity Date the aggregate principal amount of Loans outstanding on such date.

### **2.05 Interest.**

(a) Subject to the provisions of subsection (b) below, (i) each ~~Eurodollar Rate~~Daily Simple SOFR Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to ~~the Eurodollar Rate~~Daily Simple SOFR plus the Applicable Rate; and (ii) each Base Rate Committed Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b)

(i) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) Upon the request of the Lender, if any amount (other than principal of any Loan) payable by any Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Upon the request of the Lender, while any Event of Default exists (other than as set forth in clauses (b)(i) and (b)(ii) above), the applicable Borrowers shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

#### **2.06 Fees.**

(a) Upfront Fee. The Company shall pay to the Lender an upfront fee in an amount equal to \$375,000. The upfront fee shall be fully earned on the Closing Date and shall be due and payable on January 5, 2014.

(b) Other Fees. The Company shall pay to the Lender such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

**2.07 Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate.** All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to ~~the Eurodollar Rate~~ Daily Simple SOFR) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided



that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.09(a), bear interest for one day. Each determination by the Lender of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

**2.08 Evidence of Debt.** The Loans made by the Lender shall be evidenced by one or more accounts or records maintained by the Lender in the ordinary course of business. The accounts or records maintained by the Lender shall be conclusive absent manifest error of the amount of the Loans made by the Lender to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. Upon the request of the Lender, the Borrowers shall execute and deliver to the Lender a Master Note, which shall evidence the Loans in addition to such accounts or records. The Lender may attach schedules to the Master Note and endorse thereon the date, Type (if applicable), amount and maturity of the Loans and payments with respect thereto.

### **2.09 Payments Generally.**

(a) General. All payments to be made by any Borrower shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by any Borrower hereunder shall be made to the Lender, at the Lender's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. All payments received by the Lender after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by any Borrower or the Company shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) Funding Source. Nothing herein shall be deemed to obligate the Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by the Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

### **2.10 Borrowers.**

(a) Effective as of the date hereof, each Subsidiary that has executed this Agreement as a Borrower shall be a "Borrower" hereunder and may receive or cause the Company (as agent for such Subsidiary) to receive Loans for the account of such Subsidiary on the terms and conditions set forth in this Agreement.

(b) In the event of any proposed Collateral Substitution wherein any Subsidiary which owns the real property proposed to be a Financed Property in connection with such Collateral Substitution is not an existing Borrower, the Company shall designate such Subsidiary as a Borrower and such Subsidiary shall deliver the documents required by Section 6.05 prior to or substantially simultaneously with such proposed Financed Property entering the Property Pool, including the delivery of a Joinder Agreement executed by such Subsidiary identifying such Subsidiary as a Borrower. The parties hereto acknowledge and agree that prior to any such Subsidiary becoming entitled to receive Loans hereunder, the Lender shall have received the documents required by Section 6.05. Upon satisfaction of the foregoing requirements and any other requirements herein applicable to any such Subsidiary becoming a Borrower hereunder and any proposed Financed Property entering the Property Pool, the Lender agrees to permit such

Borrower to receive Loans hereunder on the terms and conditions set forth herein, and each of the parties agrees that such Borrower otherwise shall be a Borrower for all purposes of this Agreement.

(c) Notwithstanding any other provision of this Agreement, each Borrower shall be jointly and severally liable as a primary obligor, and not merely as surety, for any and all Obligations, whether voluntary or involuntary and however arising, whether direct or acquired by the Lender by assignment or succession, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined (such Obligations, the “Borrowers’ Liabilities”).

(d) Each Borrower expressly waives any and all defenses now or hereafter arising or asserted by reason of (i) any lack of legality, validity or enforceability of this Agreement, of the Master Note, of any other Loan Document, or of any other agreement or instrument creating, providing security for, or otherwise relating to any of the Obligations or any guaranty of any of the Borrowers’ Liabilities (the Loan Documents and all such other agreements and instruments being collectively referred to as the “Related Agreements”); (ii) any action taken under any of the Related Agreements, any exercise of any right or power therein conferred, any failure or omission to enforce any right conferred thereby, or any waiver of any covenant or condition therein provided; (iii) any acceleration of the maturity of any of the Borrowers’ Liabilities or of any other obligations or liabilities of any Person under any of the Related Agreements; (iv) any release, exchange, non-perfection, lapse in perfection, disposal, deterioration in value, or impairment of any security for any of the Borrowers’ Liabilities, or for any other obligations or liabilities of any Person under any of the Related Agreements; (v) any dissolution of any Borrower, any Loan Party or any other party to a Related Agreement, or the combination or consolidation of any Borrower, any Loan Party or any other party to a Related Agreement into or with another entity or any transfer or disposition of any assets of any Borrower, any Loan Party or any other party to a Related Agreement; (vi) any extension (including without limitation extensions of time for payment), renewal, amendment, restructuring or restatement of, any acceptance of late or partial payments under, or any change in the amount of any borrowings or any credit facilities available under, this Agreement, the Master Note or any other Loan Document or any other Related Agreement, in whole or in part; (vii) the existence, addition, modification, termination, reduction or impairment of value, or release of any other guaranty (or security therefor) of the Borrowers’ Liabilities; (viii) any waiver of, forbearance or indulgence under, or other consent to any change in or departure from any term or provision contained in this Agreement, any other Loan Document or any other Related Agreement, including without limitation any term pertaining to the payment or performance of any of the Borrowers’ Liabilities, or any of the obligations or liabilities of any party to any other Related Agreement; and (ix) any other circumstance whatsoever (with or without notice to or knowledge of such Borrower) which may or might in any manner or to any extent vary the risks of such Borrower, or might otherwise constitute a legal or equitable defense available to, or discharge of, a surety or a guarantor, including without limitation any right to require or claim that resort be had to any Borrower or any other Loan Party or to any collateral in respect of the Borrowers’ Liabilities. It is the express purpose and intent of the parties hereto that the joint and several liability of each Borrower for the Borrowers’ Liabilities shall be absolute and unconditional under any and all circumstances and shall not be discharged except by payment as herein provided. Notwithstanding the foregoing, the liability of each Borrower with respect to its Borrowers’ Liabilities shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code of the United States or any comparable provisions of any applicable state law.

(e) Each Borrower hereby irrevocably appoints the Company as its agent for all purposes relevant to this Agreement and each of the other Loan Documents, including (i) the giving and receipt of notices, (ii) the execution and delivery of all documents, instruments and certificates contemplated herein and all modifications hereto, and (iii) the receipt of the proceeds of any Loan made by the Lender to any such Borrower hereunder. Any acknowledgment, consent, direction, certification or other action which might otherwise be valid or effective only if given or taken by all Borrowers, or by any Borrower acting singly, shall be valid and effective if given or taken only the Company, whether or not any such other Borrower joins therein. Any notice, demand, consent, acknowledgement, direction, certification or other communication delivered the Company in accordance with the terms of this Agreement shall be deemed to have been delivered the Company and each other Borrower.

### ARTICLE III. TAXES, YIELD PROTECTION AND ILLEGALITY

#### 3.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws (as determined in the good faith discretion of the Lender) require the deduction or withholding of any Tax from any such payment by the Lender or a Loan Party, then the Lender or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to this Agreement.

(ii) If any Loan Party or the Lender shall be required by the Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding taxes, from any payment, then (A) the Lender shall withhold or make such deductions as are determined by the Lender to be required based upon the information and documentation it has received pursuant to this Agreement, (B) the Lender shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(iii) If any Loan Party or the Lender shall be required by any applicable Laws other than the Code to withhold or deduct any Taxes from any payment, then (A) such Loan Party or the Lender, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Loan Party or the Lender, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the

applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrowers. Without limiting the provisions of subsection (a) above, each Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Lender timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnifications.

(i) Each Borrower shall, and does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Company by the Lender shall be conclusive absent manifest error.

(ii) The Lender shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, the Borrowers, as applicable, against any Excluded Taxes attributable to such Lender that are payable or paid by a Borrower in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority.

(d) Evidence of Payments. Upon request by any Borrower or the Lender after any payment of Taxes by any Borrower or the Lender to a Governmental Authority as provided in this Section 3.01, such Borrower shall deliver to the Lender or the Lender shall deliver to such Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Company or such Borrower or the Lender, as the case may be.

(e) Status of Lender; Tax Documentation.

(i) If Lender is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document, the Lender shall deliver to the Company, at the time or times reasonably requested by the Company, such properly completed and executed documentation reasonably requested by the Company as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, the Lender, if reasonably requested by the Company, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Company as will enable the Company to determine whether or not the Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), and (ii)(B) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject the Lender to any

material unreimbursed cost or expense or would materially prejudice the legal or commercial position of the Lender.

(ii) Without limiting the generality of the foregoing, in the event that any Borrower is a U.S. Person,

(A) the Lender (to the extent it is a U.S. Person) shall deliver to the Company on or prior to the Closing Date (and from time to time thereafter upon the reasonable request of the Company), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) in the event Lender is a Foreign Lender, such Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Company (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes the Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Company), whichever of the following is applicable:

(I) in the case of any such Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(II) executed originals of IRS Form W-8ECI;

(III) in the case of any such Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit G-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of any Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed originals of IRS Form W-8BEN; or

(IV) to the extent any such Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-2 or Exhibit G-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if such Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-4 on behalf of each such direct and indirect partner;

(C) in the event Lender is a Foreign Lender, any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Company (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Company), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Company to determine the withholding or deduction required to be made; and

(D) if a payment made to the Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if the Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), the Lender shall deliver to the Company at the time or times prescribed by law and at such time or times reasonably requested by the Company such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Company as may be necessary for the Company to comply with its obligations under FATCA and to determine that the Lender has complied with the Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (B), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Company and the Lender in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. If any Recipient determines, in its sole discretion, that it has received a refund of any Taxes as to which it has been indemnified by the Company or any other Borrower or with respect to which the Company or any Borrower has paid additional amounts pursuant to this Section 3.01, it shall pay to the Company or such Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Company under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Company and each other Borrower, upon the request of the Recipient, agrees to repay the amount paid over to the Company or such Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to the Company or any other Borrower pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require any Recipient to make

available its tax returns (or any other information relating to its taxes that it deems confidential) to the Company, any Borrower, or any other Person.

(g) Survival. Each party's obligations under this Section 3.01 shall survive any assignment of rights by, the Lender, the termination of the Commitment and the repayment, satisfaction or discharge of all other Obligations.

**3.02 Illegality.** If the Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the Lender or its Lender's Office to make, maintain or fund Loans whose interest is determined by reference to ~~the Eurodollar Rate~~Daily Simple SOFR, or to determine or charge interest rates based upon ~~the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of the Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market~~Daily Simple SOFR, then, on notice thereof by the Lender to the Company, (a) any obligation of the Lender to make or continue ~~Eurodollar Rate~~Daily Simple SOFR Loans or to convert Base Rate Loans to ~~Eurodollar Rate~~Daily Simple SOFR Loans shall be suspended, and (b) if such notice asserts the illegality of the Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the ~~Eurodollar Rate~~Daily Simple SOFR component of the Base Rate, the interest rate on which Base Rate Loans of the Lender shall, if necessary to avoid such illegality, be determined by the Lender without reference to the ~~Eurodollar Rate~~Daily Simple SOFR component of the Base Rate, in each case until the Lender notifies the Company that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (i) each Borrower (jointly and severally) shall, upon demand from the Lender, prepay or, if applicable, convert all ~~Eurodollar Rate~~Daily Simple SOFR Loans to Base Rate Loans (the interest rate on which Base Rate Loans shall, if necessary to avoid such illegality, be determined by the Lender without reference to the ~~Eurodollar Rate~~Daily Simple SOFR component of the Base Rate), ~~either on the last day of the Interest Period therefor, if the Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if the Lender may not lawfully continue to maintain such Eurodollar Rate Loans immediately~~ and (ii) if such notice asserts the illegality of the Lender determining or charging interest rates based upon ~~the Eurodollar Rate~~Daily Simple SOFR, the Lender shall during the period of such suspension compute the Base Rate without reference to the ~~Eurodollar Rate~~Daily Simple SOFR component thereof until the Lender determines that it is no longer illegal for the Lender to determine or charge interest rates based upon ~~the Eurodollar Rate~~Daily Simple SOFR. Upon any such prepayment or conversion, each Borrower (jointly and severally) shall also pay accrued interest on the amount so prepaid or converted.

### **3.03 Inability to Determine Rates.**

(a) If in connection with any request for a ~~Eurodollar Rate~~Daily Simple SOFR Loan or a conversion ~~to of Base Rate Loans to~~Daily Simple SOFR Loans or a continuation ~~thereof, of any of such Loans, as applicable,~~ (i) the Lender determines ~~that (A) Dollar deposits are not being offered to banks in the applicable offshore interbank market for such currency for the applicable amount and Interest Period of such Eurodollar Rate Loan (which determination shall be conclusive absent manifest error) that (A) no Successor Rate has been determined in accordance with Section 3.03(b), and the circumstances under clause (i) of Section 3.03(b) or the Scheduled Unavailability Date has occurred,~~ or (B) adequate and reasonable means do not otherwise exist for determining ~~the Eurodollar Rate~~Daily Simple SOFR for any requested Interest Period with respect to a proposed ~~Eurodollar Rate~~Daily Simple SOFR Loan or in connection with an existing or proposed Base Rate Loan ~~(in each case with respect to clause (i) above, "Impacted Loans"),~~ or (ii) the Lender determines ~~that for any reason the Eurodollar Rate for any requested Interest Period~~that

Daily Simple SOFR with respect to a proposed ~~Eurodollar Rate~~ Loan does not adequately and fairly reflect the cost to the Lender of funding such ~~Eurodollar Rate~~ Loan, the Lender will promptly so notify the Company.

Thereafter, (x) the obligation of the Lender to make or maintain ~~Eurodollar~~Daily Simple SOFR Loans, or to convert Base Rate Loans to Daily Simple SOFR Loans, shall be suspended (to the extent of the affected ~~Eurodollar Rate~~Daily Simple SOFR Loans ~~or Interest Periods~~), and (y) in the event of a determination described in the preceding sentence with respect to the ~~Eurodollar Rate~~Daily Simple SOFR component of the Base Rate, the utilization of the ~~Eurodollar Rate~~Daily Simple SOFR component in determining the Base Rate shall be suspended, in each case until the Lender revokes such notice.

Upon receipt of such notice, (i) the Company may revoke any pending request for a Borrowing of, or conversion to, or continuation of ~~Eurodollar Rate~~Daily Simple SOFR Loans (to the extent of the affected ~~Eurodollar Rate~~Daily Simple SOFR Loans ~~or Interest Periods~~) or, failing that, will be deemed to have converted such request into a request for a Committed Borrowing of Base Rate Loans in the amount specified therein. ~~Notwithstanding the foregoing, if the Lender has made the determination described in clause and (ii) of the first sentence of this clause (a), the Lender, in consultation with the Company, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (1) the Lender revokes the notice delivered with respect to the Impacted Loans under clause (i) of the first sentence of this section, (2) the Lender notifies the Company that such alternative interest rate does not adequately and fairly reflect the cost to the Lender of funding the Impacted Loans, or (3) the Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the Lender or its applicable Lender's Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of the Lender to do any of the foregoing and provides the Company written notice thereof~~any outstanding Daily Simple SOFR Loans shall be deemed to have been converted to Base Rate Loans immediately.

(b) LIBOR Replacement of Daily Simple SOFR or Successor Rate. Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Lender determines (which determination shall be conclusive absent manifest error), or the ~~Borrowers notify~~Company notifies the Lender that the ~~Borrowers have~~Company has determined, that:

~~(i)~~ (i) adequate and reasonable means do not exist for ascertaining ~~LIBOR for any applicable interest period~~Daily Simple SOFR, including, without limitation, because the ~~LIBOR Screen~~Daily Simple SOFR Published Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

~~(ii)~~ (ii) the Federal Reserve Bank of New York or any successor administrator of the ~~LIBOR Screen~~Daily Simple SOFR Published Rate or a Governmental Authority having jurisdiction over the Lender or such administrator with respect to its publication of Daily Simple SOFR, in each case acting in such capacity, has made a public statement identifying a specific date after which ~~LIBOR~~Daily Simple SOFR or the ~~LIBOR Screen~~Daily Simple SOFR Published Rate shall or will no longer be made available, or permitted to be used for determining the interest rate of ~~loans (such specific date~~U.S. dollar denominated syndicated loans, or shall or will otherwise cease, provided that, at the time of such statement, there is no successor administrator that is satisfactory to the Lender, that will continue to provide Daily Simple SOFR after such specific date (the latest date on which Daily Simple SOFR or the Daily Simple SOFR Published Rate is no longer available permanently or indefinitely, the "Scheduled Unavailability Date"), ~~or~~;



~~(H) syndicated loans currently being executed, or that include language similar to that contained in this Section, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR;~~

~~then, reasonably promptly after such determination on a date and time determined by the Lender or receipt by the Lender of such notice, as applicable, (any such date, the “Daily Simple SOFR Replacement Date”), which date shall be on the relevant interest payment date, as applicable, for interest calculated and, solely with respect to clause (i) above, no later than the Scheduled Unavailability Date, the Lender and the Borrowers Company may amend this Agreement to replace LIBOR solely for the purpose of replacing Daily Simple SOFR or any then current Successor Rate in accordance with this Section 3.03 at the relevant interest payment date or payment period for interest calculated, as applicable, with an alternate alternative benchmark rate (giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities syndicated and agented in the United States for such alternative benchmark, and, in each case, including any mathematical or other adjustments to the such benchmark (if any) incorporated therein), giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities syndicated and agented in the United States for such alternative benchmarks (benchmark, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Lender from time to time in its reasonable discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate, and adjustments, shall constitute a “LIBOR Successor Rate”), together with any proposed LIBOR Successor Rate Conforming Changes (as defined below) and any such amendment shall become effective at 5:00 p.m. (New York time) on the fifth Business Day after the Lender shall have posted such proposed amendment to the Borrowers.~~

~~If no LIBOR Successor Rate has been determined and the circumstances under clause (i) above exist or the Scheduled Unavailability Date has occurred (as applicable), the Lender will promptly so notify the Borrower. Thereafter, (x) any obligation of the Lender to make or maintain Loans based on LIBOR shall be suspended (to the extent of the affected Loans or applicable interest periods), and (y) the LIBOR Rate component shall no longer be utilized in determining the Base Rate. Upon receipt of such notice, any affected Loans will be subject to the foregoing clause (y)~~

The Lender will promptly (in one or more notices) notify the Company of the implementation of any Successor Rate.

Any Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Lender, such Successor Rate shall be applied in a manner as otherwise reasonably determined by the Lender.

Notwithstanding anything else herein, ~~any definition of LIBOR~~if at any time any Successor Rate shall provide that in no event shall such LIBOR Successor Rate as so determined would otherwise be less than zero, the Successor Rate will be deemed to be zero for the purposes of this Agreement and the other Loan Documents.

~~As used above:~~

~~“LIBOR Screen Rate” means the LIBOR quote on the applicable screen page the Lender designates to determine LIBOR (or such other commercially available source providing such quotations as may be designated by the Lender from time to time).~~

~~“LIBOR Successor Rate Conforming Changes” means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Base Rate, timing and frequency of determining rates and making payments of interest and other administrative matters as may be appropriate, in the discretion of the Lender, to reflect the adoption of such LIBOR Successor Rate and to permit the administration thereof by the Lender in a manner substantially consistent with market practice (or, if the Lender determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as the Lender determines in consultation with the Borrower)~~

In connection with the implementation of a Successor Rate, the Lender will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Lender shall post each such amendment implementing such Conforming Changes to the Company reasonably promptly after such amendment becomes effective.

### 3.04 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, the Lender ~~(except any reserve requirement contemplated by Section 3.04(c));~~

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on the Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or ~~Eurodollar Rate~~ Daily Simple SOFR Loans made by the Lender;

and the result of any of the foregoing shall be to increase the cost to the Lender of making or maintaining any Loan ~~the interest on which is determined by reference to the Eurodollar Rate~~ (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by the Lender (whether of principal, interest or any other amount) then, upon request of the Lender, each Borrower (jointly and severally) will pay to the Lender, as the case may be, such additional amount or amounts as will compensate the Lender, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If the Lender determines that any Change in Law affecting the Lender or any Lender's Office of the Lender or the Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on the Lender's capital or on the capital of the Lender's holding company, if any, as a consequence of this Agreement, the Commitment of the Lender or the Loans made by, the Lender, to a level below that which the Lender or the Lender's holding company could have achieved but for such Change in Law (taking into consideration the Lender's policies and the policies of the Lender's

holding company with respect to capital adequacy), then from time to time each Borrower (jointly and severally) will pay to the Lender such additional amount or amounts as will compensate the Lender or the Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of the Lender setting forth the amount or amounts necessary to compensate the Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Company shall be conclusive absent manifest error. Each Borrower shall pay the Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of the Lender to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of the Lender's right to demand such compensation, provided that no Borrower shall be required to compensate the Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that the Lender notifies the Company of the Change in Law giving rise to such increased costs or reductions and of the Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine (9) month period referred to above shall be extended to include the period of retroactive effect thereof).

~~(e) Reserves on Eurodollar Rate Loans. Each Borrower, jointly and severally, shall pay to the Lender, as long as the Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurodollar Rate Loan equal to the actual costs of such reserves allocated to such Loan by the Lender (as determined by the Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan, provided the Company shall have received at least ten (10) days' prior notice of such additional interest from the Lender. If the Lender fails to give notice ten (10) days prior to the relevant Interest Payment Date, such additional interest shall be due and payable ten (10) days from receipt of such notice.~~

**3.05 Designation of a Different Lender's Office.** If the Lender requests compensation under Section 3.04, or requires any Borrower to pay any Indemnified Taxes or additional amounts to the Lender or any Governmental Authority for the account of the Lender pursuant to Section 3.01, or if the Lender gives a notice pursuant to Section 3.02, then at the request of the Company, the Lender shall use reasonable efforts to designate a different Lender's Office for funding or booking the Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of the Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject the Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to the Lender. Each Borrower (jointly and severally) hereby agrees to pay all reasonable costs and expenses incurred by the Lender in connection with any such designation or assignment.

**3.06 Survival.** All of the Company's and each other Borrower's obligations under this Article III shall survive termination of the Commitment, repayment of all other Obligations hereunder, and the Maturity Date.

## ARTICLE IV. CONDITIONS PRECEDENT TO LOANS

**4.01 Conditions of Initial Loans.** This Agreement shall be effective subject to satisfaction of the following conditions precedent:

(a) The Lender's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Lender:

(i) executed counterparts of (A) this Agreement (B) the Mortgages set forth on Schedule 4.01(a)(i), (C) the Guaranty and (D) the Subordination and Attornment Agreements required to be delivered in connection herewith, in each case, sufficient in number for distribution to the Lender, the Lender's counsel and the Company;

(ii) the Master Note executed by the Borrowers in favor of the Lender;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Lender may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party;

(iv) such documents and certifications as the Lender may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in the respective jurisdictions specified in Schedule 4.01(a)(iv), which includes each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(v) a favorable opinion of Jones Day, counsel to the Loan Parties, addressed to the Lender, in the form attached as Exhibit F

(vi) a favorable opinion of local counsel to the Loan Parties in Florida, Texas, Arkansas, Georgia and North Carolina, addressed to the Lender in form and substance reasonably satisfactory to the Lender;

(vii) a certificate of a Responsible Officer of each Loan Party either (A) attaching copies of all consents, licenses and approvals (including pursuant to any Franchise Agreement or Framework Agreement) required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required;

(viii) a certificate signed by a Responsible Officer of the Company certifying (A) that the conditions specified in Sections 4.02(a) and (b) have been satisfied, and (B) that there has been no event or circumstance since the date of the Audited Financial

Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect;

(ix) a certificate signed by the chief financial officer, treasurer or chief accounting officer of the Company, certifying that the Company individually is Solvent and the Loan Parties taken as a whole are Solvent, in each case after giving effect to this Agreement and the other Loan Documents and the Indebtedness pursuant hereto and thereto;

(x) Intentionally Omitted;

(xi) evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect, including endorsements naming the Lender as an additional insured or lenders loss payee, as the case may be, on all insurance policies maintained with respect to properties of the Company of any Loan Party constituting part of the Collateral;

(xii) UCC financing statements for filing in all places required by applicable law to perfect the Liens of the Lender under the Security Instruments as a perfected Lien as to items of Collateral in which a security interest may be perfected by the filing of financing statements;

(xiii) UCC search results with respect to the Loan Parties showing only Liens acceptable to the Lender (or pursuant to which arrangements reasonably satisfactory to the Lender shall have been made to remove any unacceptable Liens promptly after the Closing Date); and

(xiv) such other assurances, certificates, documents, consents or opinions as the Lender reasonably may require.

(b) Any fees required to be paid on or before the Closing Date shall have been paid.

(c) Unless waived by the Lender, the Company shall have paid all accrued fees, charges and disbursements of counsel to the Lender (directly to such counsel if requested by the Lender) to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Company and the Lender).

**4.02 Conditions to all Borrowings.** The obligation of the Lender to honor any Loan Notice (other than a Loan Notice requesting only a conversion of Loans to the other Type) or to make any Loan pursuant to Section 2.01, or to effect any Collateral Substitution, is subject to the following conditions precedent:

(a) The representations and warranties of the Company and each other Loan Party contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct on and as of the date of such Borrowing or Collateral Substitution, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that for purposes of this Section 4.02, the

representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01 of the Syndicated Credit Agreement.

(b) No Default shall exist or would result from such proposed Borrowing or Collateral Substitution or from the application of the proceeds thereof.

(c) In the event of a Borrowing, the Lender shall have received a Loan Notice in accordance with the requirements hereof.

(d) With respect to each such Financed Property which is to be financed in whole or in part by such Loan, or which is added to the Property Pool by such Collateral Substitution, the Lender shall have received each of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated as of the date of such Loan (or a recent date before the date of such Loan, or, with respect to such Financed Properties to be financed as of the Closing Date, except to the extent permitted to be delivered in accordance with Section 6.10) and each in form and substance reasonably satisfactory to the Lender:

(i) a satisfactory FIRREA Appraisal;

(ii) (x) a Mortgage and evidence of the proper recordation of such Mortgage in the appropriate filing office (or delivery of such Mortgage to the applicable title company for recordation), and (y) the Real Estate Support Documents with respect to such Financed Property;

(iii) a copy of the Lease of such Financed Property to the applicable Subsidiary and any sublease or Memorandum of Lease associated therewith, if any;

(iv) to the extent the applicable lessee is not already a party to the Guaranty, a fully executed Joinder Agreement executed by the lessee under any Lease of such Financed Property joining such lessee to the Guaranty;

(v) a favorable opinion of local counsel to the Borrowers in the state where such Financed Property is located, addressed to the Lender, as to such matters concerning the Borrowers owning such Financed Property, any Guarantor leasing such property, and the Loan Documents as the Lender may reasonably request;

(vi) in the event of a Collateral Substitution, a certificate of a Responsible Officer of the Company in form and detail reasonably satisfactory to the Lender (which may be contained in the applicable Loan Notice) demonstrating that the Collateral Substitution Test shall have been met;

(vii) Uniform Commercial Code search results showing no Liens on the Financed Property other than Mortgage Permitted Liens and those liens acceptable to the Lender in its sole discretion;

(viii) delivery of Uniform Commercial Code financing statements and fixture filings suitable in form and substance for filing in all places required by applicable Law to perfect the Liens of the Lender under the Mortgage and other Security Instruments related to such Financed Property as a first priority Lien (subject only to Mortgage

Permitted Liens) as to items of Collateral in which a security interest may be perfected by the filing of financing statements or fixture filings, and such other documents and/or evidence of other actions as may be necessary under applicable Law to perfect the Liens of the Lender under the Mortgage and other Security Instruments related to such Financed Property as a first priority Lien (subject only to Mortgage Permitted Liens) in and to such other Collateral as the Lender may require;

(ix) evidence that all insurance (including flood insurance, if applicable) required to be maintained pursuant to the Loan Documents with respect to such Financed Property has been obtained and is in effect; and endorsements naming the Lender as an additional insured and loss payee, as the case may be, on all such insurance policies maintained with respect to such Financed Property; and

(x) with respect to the applicable Borrower associated with such Financed Property (to the extent not previously delivered):

(A) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of such Borrower as the Lender may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with the Loan Documents to which such Borrower is a party;

(B) such documents and certifications as the Lender may reasonably require (x) to evidence that each Loan Party is duly organized or formed, and (y) to evidence that such Borrower is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(C) a certificate of a Responsible Officer of such Borrower either (A) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Borrower and the validity against such Borrower of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required; and

(D) a certificate signed by the chief financial officer, treasurer or chief accounting officer of the Company, certifying that the Company individually is Solvent and the Loan Parties taken as a whole are Solvent, in each case after giving effect to the Borrowing or the Collateral Substitution and the other Loan Documents and the Indebtedness pursuant hereto and thereto.

(e) The applicable Borrower associated with such Financed Property must be a Borrower as of the Closing Date or pursuant to Section 6.05.

(f) With respect to each Collateral Substitution, the Lender shall have received a \$7,500.00 collateral substitution fee.

(g) Any fees required to be paid on or before the date of the applicable Borrowing or Collateral Substitution shall have been paid.

Each Loan Notice (other than a Loan Notice requesting only a conversion of Loans to the other Type) submitted by the Company and each Collateral Substitution shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Borrowing or Collateral Substitution.

The Company and the Borrowers, jointly and severally, shall pay to the Lender any collateral substitution fees required by this Section 4.02.

## ARTICLE V. REPRESENTATIONS AND WARRANTIES

The Company and each Borrower represents and warrants to the Lender that:

**5.01 Existence, Qualification and Power.** Each Loan Party and each Subsidiary thereof (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

**5.02 Authorization; No Contravention.** The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries, or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law; except, in the case of clause (b)(i) or (c), to the extent such contravention, conflict or violation would not reasonably be expected to have Material Adverse Effect.

**5.03 Governmental Authorization; Other Consents.** No registration with, or consent or approval of, or other action by, any federal, state or other Governmental Authority is or will be required in connection with the execution, delivery and performance of this Agreement or any other Loan Document, the execution and delivery of the Master Note or repayment of the Borrowings hereunder.

**5.04 Binding Effect.** This Agreement and each of the Loan Documents have been duly executed and delivered by each Loan Party which is a party thereto and constitute legal, valid and binding obligations of each Loan Party party thereto enforceable in accordance with their respective terms, subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium and similar Laws affecting creditors' rights generally and general principles of equity.

**5.05 Financial Statements; No Material Adverse Effect.**



(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (ii) fairly present in all material respects the financial condition of the Company and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein.

(b) The unaudited consolidated and consolidating balance sheets of the Company and its Subsidiaries dated June 30, 2013, and the related consolidated and consolidating statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of the Company and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

**5.06 Litigation.** There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Company after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against the Company or any of its Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) except as specifically disclosed in Schedule 5.06, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**5.07 No Default.** Neither any Loan Party nor any Subsidiary thereof is in default under or with respect to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

**5.08 Ownership of Property; Liens.** (a) Each of the Company and each Subsidiary has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, and (b) each of the Company and each Subsidiary owns all property necessary in the operation of its business, except in each case for such defects in title or such failure to own or lease property as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The property of the Company and its Subsidiaries is subject to no Liens, other than Permitted Liens.

**5.09 Environmental Compliance.** The Company and each of its Subsidiaries has complied in all respects with all Environmental Laws except where the failure to comply could not be expected to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries has received written notice of any failure so to comply except where the failure to comply could not be expected to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries manages any hazardous wastes, hazardous substances, hazardous materials, toxic substances or toxic pollutants in a manner that violates any regulations promulgated pursuant to Environmental Laws except for any such violation that could not be expected to have a Material Adverse Effect.

**5.10 Insurance.** The properties of the Company and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Company, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Company or the applicable Subsidiary operates.

**5.11 Taxes.** The Company and its Subsidiaries have filed all Federal, state and other material tax returns required to be filed, and have paid, or have made adequate provision for payment of, all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves or other appropriate provisions have been provided in accordance with GAAP. There is no proposed tax assessment against the Company or any Subsidiary that would, if made, have a Material Adverse Effect.

#### **5.12 ERISA Compliance.**

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state laws. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service or, in the case of a Pension Plan that is maintained pursuant to the adoption of a master or prototype or volume submitter document, the sponsor of such master or prototype or volume submitter document has obtained from the Internal Revenue Service a favorable opinion letter stating that the form of such master or prototype or volume submitter document is acceptable for the establishment of a tax-qualified plan under Section 401(a) of the Code. To the best knowledge of the Company, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the best knowledge of the Company, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) No ERISA Event has occurred that would reasonably be expected to result in a material liability, and neither the Company nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA event that would result in a material liability. Except to the extent the following would not reasonably be expected to have a Material Adverse Effect, (i) the Company and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (ii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher and neither the Company nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date; (iii) neither the Company nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no

premium payments which have become due that are unpaid; (iv) neither the Company nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (v) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

(d) Neither the Company nor any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan other than (A) on the Closing Date, those listed on Schedule 5.12(d) hereto and (B) thereafter, Pension Plans not otherwise prohibited by this Agreement.

**5.13 Loan Party Information; Subsidiaries; Addresses; Equity Interests.** As of the Closing Date, the Company has no Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13, and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and nonassessable and are owned by a Loan Party in the percentages specified on Part (a) of Schedule 5.13 free and clear of all Liens (except for Liens permitted by Section 7.02(a), (c) or (d) of the Syndicated Credit Agreement, and transfer restrictions contained in the Franchise Agreements and the Framework Agreements). As of the Closing Date, the addresses set forth in Schedule 5.13 are each Loan Party's place of business, name, type or organization, state organization number, jurisdiction of organization and each Loan Party is formed or incorporated only in the state shown for it on Schedule 5.13 hereto. Each of the Company and each Borrower shall, and shall cause each other Loan Party to, promptly (but in any event within five (5) Business Days) report to the Lender any change in any such Person's name, type of organization, state organization number, jurisdiction of organization or federal employers identification number.

**5.14 Margin Regulations; Investment Company Act.**

(a) Neither the Company nor any Borrower is engaged or will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) None of the Company, any Person Controlling the Company, or any Subsidiary is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

**5.15 Disclosure.** Neither this Agreement, the other Loan Documents, nor any other document delivered by or with the knowledge and consent of the Company on behalf of the Company or any Subsidiary in connection with the transactions contemplated hereby and the negotiation of this Agreement or in connection with any Loan Document or included therein contained or contains any material misstatement of fact or omitted or omits to state any fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; provided that, with respect to projected financial information, the Company and the Borrowers represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time prepared, it being understood that projections by their nature are uncertain and no assurance is given that the results reflected in such projections will be achieved.

**5.16 Compliance with Laws.** Each of the Company and each Subsidiary thereof is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

**5.17 Intellectual Property; Licenses, Etc.** The Company and its Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, “IP Rights”) that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person, except to the extent such conflict would not reasonably be expected to result in a Material Adverse Effect. No slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by the Company or any Subsidiary infringes upon any rights held by any other Person in a manner that would reasonably be expected to result in a Material Adverse Effect.

**5.18 Books and Records.** Each of the Company and each Subsidiary maintains proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied have been made of all financial transactions and matters involving the assets and business of the Company or such Subsidiary, as the case may be.

**5.19 Franchise Agreements and Framework Agreements.** As of the Closing Date, neither the Company nor any of its Subsidiaries is a party to any dealer Franchise Agreements, or any Framework Agreements, other than those listed in Schedule 5.19, which schedule shows the manufacturer and the Loan Party which is a party to each such agreement, the date such agreement was entered into and the expiration date (if any) of each such agreement. Each of the Franchise Agreements and Framework Agreements is currently in full force and effect, and as of the Closing Date no Loan Party has received any notice of termination with respect to any such agreements; and, except as disclosed on Schedule 5.19, no Loan Party is aware of any event which with notice, lapse of time, or both would allow any manufacturer which is a party to any of the Franchise Agreements or Framework Agreements to terminate any such agreements. There exists no present condition or state of facts or circumstances in regard to said Franchise Agreements or Framework Agreements, in the aggregate, which could reasonably be expected to have a Material Adverse Effect.

**5.20 Engaged in Business of Vehicle Sales and Related Businesses.** Neither the Company nor any Borrower is engaged in any business other than (a) in the case of each Borrower, the business of owning and operating the applicable Financed Property and business ancillary thereto and (b) in the case of the Company and each Borrower which is a dealership, the business of (i) selling Vehicles and related activities and (ii) acquiring, owning, operating and, in some cases, selling dealerships engaged in such businesses.

**5.21 Collateral.** The provisions of each of the Security Instruments are effective to create in favor of the Lender, a legal, valid and enforceable perfected security interest in all right, title and interest of each applicable Loan Party in the Collateral described therein, except as otherwise permitted hereunder.

**5.22 Solvency.** Both before and after giving effect to the Loans hereunder, the Company individually is Solvent, and the Loan Parties taken as a whole are Solvent.

**5.23 Labor Matters.** As of the Closing Date, to the Company's and its Subsidiaries' knowledge, there are no material labor disputes to which the Company or any of its Subsidiaries are or are reasonably expected to become a party, including, without limitation, any strikes, lockouts or other disputes relating to such Persons' plants and other facilities.

**5.24 Taxpayer Identification Number.** Each Loan Party's true and correct U.S. taxpayer identification number is set forth on [Schedule 9.02](#).

**5.25 OFAC.** No Borrower, nor any of their respective Subsidiaries, nor, to the knowledge of any Borrower and their respective Subsidiaries, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity currently the subject of any Sanctions [or included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority](#), nor is any Borrower or any Subsidiary located, organized or resident in a Designated Jurisdiction.

**5.26 Leases.** There is a Lease in force for each Financed Property listed on [Schedule 5.26](#), each Lease is in full force and effect without amendment or modification from the form or copy delivered to the Lender except for amendments permitted hereunder; no default by any party exists under any such Lease that could result in termination of such Lease, nor has any event occurred which, with the passage of time or the giving of notice, or both, would constitute such a default under any such Lease. [Schedule 5.26](#) is a complete and correct listing of all Leases as of the Closing Date.

**5.27 Covered Entities.** No Loan Party is a Covered Entity.

#### **[5.28 Anti-Corruption Laws](#)**

[. Each Borrower and its Subsidiaries have conducted their businesses in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977 and other similar anti-corruption legislation in other jurisdictions that are applicable to any Borrower or its Subsidiaries \(including, if applicable, the UK Bribery Act 2010\), and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.](#)

#### **[5.29 Beneficial Ownership](#)**

[. As of the date that any Beneficial Ownership Certification is delivered to Lender pursuant to Section 6.12, the information included in such Beneficial Ownership Certification delivered to the Lender is true and correct in all respects.](#)

### **ARTICLE VI. AFFIRMATIVE COVENANTS**

The Company and the Borrowers covenant that, so long as the Lender shall have a Commitment hereunder or any Loan or other Obligation shall remain unpaid or outstanding, the covenants and agreements applicable to the Company and its Subsidiaries which are contained in Sections 6.01, 6.02 and 6.03 of the Syndicated Credit Agreement (including all related exhibits, schedules and defined terms referred to therein) are hereby (or, in the case of each Subsequent Provision, shall, upon its effectiveness, be) incorporated herein by reference as if set forth in full herein, mutatis mutandis; and the Company and each Borrower shall comply, and shall cause their respective Subsidiaries to comply, with such incorporated covenants and agreements.

The Company and the ~~Borrower~~Borrowers further covenant that, so long as the Lender shall have a Commitment hereunder or any Loan or other Obligation shall remain unpaid or unsatisfied, all covenants and agreements (other than the covenants and agreements specified in the immediately preceding paragraph and those covenants and agreements set forth in Sections 6.05, 6.07, 6.10, 6.11, 6.12, 6.13, 6.14, 6.16, and 6.17 of the Syndicated Credit Agreement) set forth in Article VI of the Syndicated Credit Agreement (including all related exhibits, schedules and defined terms referred to therein) are hereby (or, in the case of each Subsequent Provision, shall, upon its effectiveness, be) incorporated herein by reference as if set forth in full herein, mutatis mutandis, but only to the extent as they apply to the Company or any other Loan Party; and the Company and each Borrower shall comply, and cause each other Loan Party to comply, with the covenants and agreements incorporated by reference pursuant to this sentence.

So long as the Lender shall have a Commitment hereunder or any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, the Company and each other Borrower shall, and shall cause each Loan Party to:

**6.01 Notices.** Promptly notify the Lender:

(a) of the occurrence of any Default;

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including any report, study, inspection or test that indicates the presence of any Hazardous Materials on or about any Financed Property or any adverse condition relating to any Financed Property, any buildings or any such materials which presence or adverse condition could reasonably be expected to have a Material Adverse Effect;

(c) of (i) any Lease (and deliver to the Lender a copy of such Lease) entered into after the Closing Date, (ii) any amendment or other modification (and deliver to the Lender a copy of such amendment or modification) of any Lease, (iii) the termination or expiration of any Lease and (iv) any material adverse change in the relationship between the applicable Borrower and any lessee under any Lease;

Each notice pursuant to this Section 6.01 shall be accompanied by a statement of a Responsible Officer of the Company setting forth details of the occurrence referred to therein and stating what action the Company or the applicable Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.01(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

**6.02 Maintenance of Insurance.**

(a) Maintain, on a consolidated basis, insurance to such extent and against such hazards and liabilities as is commonly maintained by companies similarly situated (and in any event each Borrower will maintain such insurance). In addition to the insurance referred to above, with respect to each Mortgaged Property, each Borrower will maintain the following policies:

(i) Prior to construction of any improvements on any Mortgaged Property, an “all-risk”, completed value, non-reporting builder’s risk insurance policy or policies that provide coverage similar to the foregoing must be submitted to the Lender, unless such construction is covered by a policy already provided to the Lender. This policy must be from a company and in an amount satisfactory to the Lender, must have a vandalism and

malicious mischief endorsement and must be sufficient to avoid the application of any co-insurance provisions, must include provisions for a minimum 30-day advance written notice of any intended policy cancellation or non-renewal, and must designate the Lender as mortgagee and loss payee in a standard mortgagee endorsement with the following address:

Bank of America, N.A.  
NC4-105-02-17  
4161 Piedmont Parkway  
Greensboro NC 27410  
Attn: Monitoring and Compliance

(ii) Each Borrower covenants to maintain or cause to be maintained, by such Borrower and, during the construction of any improvements on any Mortgaged Property, the general contractor, general accident and public liability insurance against all claims for bodily injury, death or property damage occurring upon, in or about any part of such Mortgaged Property. The policies must be from companies and in amounts satisfactory to the Lender. The contractor's policy must include worker's compensation coverage in an amount sufficient to satisfy statutory requirements;

(iii) An "all-risk" property insurance policy must be in effect, and an original certificate from the issuing insurance company evidencing that the policy is in full force and effect must be submitted to the Lender; provided that such insurance shall include coverage for earthquakes and against wind damage on such terms as the Lender may reasonably require. The policy must be from a company satisfactory to the Lender, must be in an amount satisfactory to the Lender, must eliminate all co-insurance provisions, must include a Replacement Cost and Agreed Amount/Stipulated Value Endorsement (or policy provisions providing similar coverage), must include a Sinkhole Endorsement, if appropriate, must include provisions for a minimum 30-day advance written notice to the Lender of any intended policy cancellation or non-renewal, and must designate the Lender as mortgagee and loss payee in a standard mortgagee endorsement, as its interest may appear;

(iv) If, and to the extent that, any Mortgaged Property is located within an area that has been or is hereafter designated or identified as an area having special flood hazards as defined in the Federal Flood Disaster Protection Act of 1973, as such act may from time to time be amended and in effect, or pursuant to any other national or state program of flood insurance, each Borrower shall carry flood insurance with respect to such Mortgaged Property in an amount not less than the maximum amount available under the Flood Disaster Protection Act of 1973 and the regulations issued pursuant thereto, as amended from time to time, in form complying with the "insurance purchase" requirement of that Act;

(v) Each such liability insurance policy shall name the Lender as an additional insured party with respect to such Mortgaged Property, and each such casualty insurance policy shall name the Lender as a loss payee, and shall provide by way of endorsements, riders or otherwise that (i) proceeds will be payable to the Lender as its interest may appear; (ii) such insurance policy shall be renewed, if renewal is available, and shall not be canceled and further, shall not be endorsed, altered or reissued to effect a change in coverage in any manner materially adverse to the Lender, for any reason and to any

extent whatsoever unless such insurer shall have first given the Lender thirty (30) days' prior written notice thereof; (iii) such insurance policy shall not be impaired by any act or neglect of any Borrower or any use of such Mortgaged Property for purposes more hazardous than are permitted by such policy; and (iv) the Lender may, but shall not be obliged to, make premium payments to prevent any nonrenewal, cancellation, endorsement, alteration or reissuance and such payments shall be accepted by the insurer to prevent same;

(vi) The Lender shall be furnished with the original of each such initial policy (or a binder for the issuance of such policy) or a certificate with a duplicate of such original policy (or binder) coincident with the execution of the Mortgage related to such Mortgaged Property and satisfactory evidence of renewal thereof upon expiration of the initial or each preceding renewal policy (provided that the coverage required hereunder remains in effect at all times), together with receipts or other evidence that the premiums thereon have been paid within thirty (30) days following the billing for such renewal, with the original of each renewal policy or a certificate with a duplicate of such renewal policy to follow as soon as available or, in any such case, an appropriate broker's certificate in respect thereto. Upon request by the Lender, each Borrower shall furnish to the Lender a statement certified by such Borrower or a duly authorized officer of such Borrower of the amounts of insurance maintained in compliance with this Section 6.02, a general description of the risks covered by such insurance and of the insurance company or companies which carry such insurance. In addition, each Borrower will promptly comply with any and all requirements of any insurer of any portion of any Mortgaged Property and any and all rules and regulations of any insurance commission or board of fire underwriters having jurisdiction over such Mortgaged Property; and

(vii) Without limiting any of the other provisions of this Section 6.02, all losses under, and the proceeds payable under, any policies of insurance that any Borrower may elect to obtain, whether or not required hereunder, which insure, cover or relate to any Mortgaged Property, or any portion thereof, shall be applied in the same manner and to the same extent as provided herein with respect to any insurance required to be carried by such Borrower.

(f) Unless the Company or a Borrower provides the Lender with evidence of the insurance coverage as required by this Agreement or any other Loan Document, the Lender (at its discretion) may purchase insurance at the Company's and the Borrowers' expense to protect the Lender's interest. This insurance may, but need not, also protect the Company's and the Borrowers' interest. If the Collateral becomes damaged, the coverage the Lender purchases may not pay any claim the Company, any Borrower or any of their Subsidiaries makes or any claim made against the Company, any Borrower or any of their Subsidiaries. The Company or a Borrower, as applicable, may later cancel this coverage by providing evidence that the Company or such Borrower, as applicable, has obtained property coverage elsewhere.

(g) The Company and the ~~Borrower~~Borrowers (jointly and severally) are responsible for the cost of any insurance purchased by the Lender. The cost of this insurance may be added to the Obligations. If the cost is added to the Obligations, the interest rate provided in Section 2.05(b)(i) shall apply to such added amount. The effective date of coverage may be the date the Company's or the applicable Borrower's prior coverage lapsed or the date the Company or the applicable Borrower failed to provide proof of coverage.



(h) Each of the Company and each Borrower acknowledges that the coverage the Lender purchases may be considerably more expensive than insurance the Company or such Borrower can obtain on its own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

**6.03 Inspection Rights.** Permit representatives and independent contractors of the Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Company; provided, however, that (a) without limiting any expense amounts that may be owned under the Syndicated Credit Agreement or any documents relating thereto, while no Event of Default exists the Borrowers shall be responsible for expenses associated with only one such visit or inspection by the Lender and its contractors per calendar year, and (b) when an Event of Default exists the Lender (or any of its respective representatives or independent contractors) may do any of the foregoing at any time or times (all at the expense of the Borrowers) during normal business hours and without advance notice.

**6.04 Use of Proceeds.** The Borrowers shall use the proceeds of the Loans for general working capital, capital expenditures and other lawful purposes of the Company (including, without limitation, the repayment of Indebtedness). No Loans shall be used for any purpose which would be in contravention of any requirement of Law.

**6.05 Additional Subsidiaries.** (a) As soon as practicable (but in any event within ten (10) days or such longer period as the Lender may agree in its sole discretion) after the acquisition or creation of any Subsidiary which is or will be a lessee of Financed Property or the designation of any existing Subsidiary as a lessee of Financed Property or (b) prior to or simultaneously with any Collateral Substitution, in the event any Subsidiary which owns real property proposed to be Financed Property in connection with such Collateral Substitution is not an existing Borrower (or any Subsidiary which leases such property, Subsidiary Guarantor, as the case may be), cause to be delivered to the Lender (in addition to any other documents required to be delivered under this Agreement, including pursuant to Section 4.02 or otherwise) each of the following:

(a) a Joinder Agreement duly executed by such Subsidiary with all schedules and information thereto appropriately completed with respect to such Subsidiary becoming a “Borrower” or a “Subsidiary Guarantor”, as applicable;

(b) in the case of any such Subsidiary becoming a “Borrower”, UCC financing statements naming such Subsidiary as “Debtor” and naming the Lender as “Secured Party,” in form, substance and number sufficient in the reasonable opinion of the Lender and its counsel to be filed in all UCC filing offices in which filing is necessary or advisable to perfect in favor of the Lender the Liens on the Collateral conferred under such Joinder Agreement and other Security Instruments to the extent such Lien may be perfected by UCC filings;

(c) an opinion or opinions of counsel to such Subsidiary dated as of the date of delivery of such Joinder Agreements (and other Loan Documents) provided for in this Section 6.05 and addressed to the Lender, in form and substance acceptable to the Lender;

(d) the documents described in Sections 4.01(a)(iii), (iv), (vii), (xi), (xiii) and (xv) with respect to such Subsidiary; and

(e) evidence satisfactory to the Lender that all taxes, filing fees, recording fees related to the perfection of the Liens securing the Obligations have been paid and all reasonable costs and expenses of the Lender in connection therewith have been paid.

**6.06 Preservation of Existence, Etc..** (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.03 or 7.04 of the Syndicated Credit Agreement; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

**6.07 Further Assurances.** Each of the Company and the Borrowers shall, and shall cause each of the Loan Parties to, to the extent applicable, execute, acknowledge, deliver, and record or file such further instruments, including, without limitation, further security agreements, financing statements, and continuation statements, and do such further acts as may be reasonably necessary, desirable, or proper to carry out more effectively the purposes of this Agreement, and to protect the Liens granted in this Agreement or the Loan Documents to which any of them respectively is a party and against the rights or interests of third persons, and the Company and the Borrowers (jointly and severally) will pay all reasonable costs connected with any of the foregoing.

**6.08 Leases.** At all times, comply in all material respects with the terms and provisions of the Leases of the Financed Properties, and cause such Leases to be kept in full force and effect without termination, amendment or modification, except for (i) any modification or amendment of a Lease made in the ordinary course of business consistent with past practices of the Loan Parties, and which amendment or modification is not materially adverse to the Loan Parties or the Lender or (ii) renewals or extensions (A) on either substantially the same terms as the existing Lease of a Financed Property, or (B) as otherwise approved by the Lender in writing.

**6.09 Syndicated Credit Agreement.** On or after the date of any Removal Event, all certificates or notices required to be delivered to under Section 6.01, 6.02 or 6.03 of the Syndicated Credit Agreement shall be delivered to Lender hereunder.

**6.10 Post-Closing Covenant.** Deliver, or cause to be delivered, to the Lender each of the agreements, instruments and other documents (each in form and substance reasonably acceptable to the Lender) set forth on Schedule 6.10, and to take, or cause to be taken, each of the actions set forth on Schedule 6.10, in each case within the time set forth therein for each such agreement, instrument, document or action.

**6.11 Use of Financed Properties as Vehicle Dealerships.** Ensure that each Financed Property is at all times either (a) used (or under development for use) by a Borrower as a Vehicle dealership, (b) used (or under development for use) by a Borrower as a facility for the sale, repair, service or storage of Vehicles or the provision of related goods or services, or (c) used by a Borrower for any purpose ancillary to the uses described in clause (a) or (b).

**6.12 Patriot Act and Beneficial Ownership Regulation.** Promptly following any request therefor, provide information and documentation reasonably requested by the Lender for purposes of compliance with applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act and the Beneficial Ownership Regulation. Without

limiting the generality of the foregoing, promptly following any request therefor made by the Lender at any time, the Borrowers shall deliver to the Lender a Beneficial Ownership Certification with respect to any Borrower or other Loan Party identified by the Lender in such request.

### **6.13 Anti-Corruption Laws**

. Conduct its businesses in material compliance with the United States Foreign Corrupt Practices Act of 1977 and other similar anti-corruption legislation in other jurisdictions that are applicable to any Borrower or its Subsidiaries (including, if applicable, the UK Bribery Act 2010), and maintain policies and procedures designed to promote and achieve compliance with such laws.

## **ARTICLE VII. NEGATIVE COVENANTS**

The Company and the Borrowers covenant that, so long as the Lender shall have a Commitment hereunder or any Loan or other Obligation shall remain unpaid or outstanding, the covenants and agreements applicable to the Company and its Subsidiaries which are contained in Sections 7.01, 7.04, 7.05, 7.07, 7.08, 7.10, 7.11, 7.14, 7.16 and 7.19 of the Syndicated Credit Agreement (including all related exhibits, schedules and defined terms referred to therein) are hereby (or, in the case of each Subsequent Provision, shall, upon its effectiveness, be) incorporated herein by reference as if set forth in full herein, mutatis mutandis; and the Company and each Borrower shall comply, and shall cause their respective Subsidiaries to comply, with such incorporated covenants and agreements.

The Company and the ~~Borrower~~Borrowers further covenant that, so long as the Lender shall have a Commitment hereunder or any Loan or other Obligation shall remain unpaid or unsatisfied, all covenants and agreements (other than the covenants and agreements specified in the immediately preceding paragraph and those covenants and agreements set forth in Sections 7.13, 7.17, 7.21 and 7.22 of the Syndicated Credit Agreement) set forth in Article VII of the Syndicated Credit Agreement (including all related exhibits, schedules and defined terms referred to therein) are hereby (or, in the case of each Subsequent Provision, shall, upon its effectiveness, be) incorporated herein by reference as if set forth in full herein, mutatis mutandis, but only to the extent as they apply to the Company or any other Loan Party; and the Company and each Borrower shall comply, and cause each other Loan Party to comply, with the covenants and agreements incorporated by reference pursuant to this sentence.

So long as the Lender shall have any Commitment hereunder or any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, neither the Company nor any other Loan Party shall, nor shall it permit any Borrower to, directly or indirectly:

**7.01 Use of Proceeds.** Use the proceeds of any Loan, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

**7.02 Amendments of Certain Indebtedness.** Amend, modify or change in any manner, any term or condition of any Subordinated Indenture Indebtedness or any refinancing of any Subordinated Indenture Indebtedness so that the terms and conditions thereof are less favorable in all material respects to the Lender than the terms and conditions of the relevant Subordinated Indenture Indebtedness as of the later of the Closing Date or the date of incurrence thereof; provided that the Company may enter into supplements to the Indentures (as required by

the terms of the Indentures) if the sole effect of such supplements is to add additional guarantors of the Subordinated Indenture Indebtedness.

**7.03 Dispositions.** Permit any Subsidiary to, permit any Disposition (whether in one or a series of transactions) of any Financed Property or any portion of any Financed Property, or enter into any agreement so to do, except Permitted Financed Property Dispositions.

**7.04 Amendments of Organizational Documents.** Amend its Organizational Documents in a manner that could reasonably be expect to (a) impair the enforceability of any Loan Document in any material respect or the perfection or priority of any Lien created thereunder, (b) impair in any material respect its ability to perform its obligations under the Loan Documents or (c) otherwise have a Material Adverse Effect.

**7.05 Sanctions.** Directly or indirectly, use the proceeds of any Loan, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other individual or entity, to fund any activities of or business with any individual or entity, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any individual or entity (including any individual or entity participating in the transaction) of Sanctions.

**7.06 Leases.** No Loan Party shall permit any Person to occupy, lease or sublease any Financed Property except for a Subsidiary party to the Lease with respect to such Financed Property, which such Subsidiary has executed and delivered to the Lender a Subordination and Attornment agreement in substantially the form of Exhibit E (each a “Subordination and Attornment Agreement”) and has joined the Subsidiary Guaranty and provided to the Lender the documents required by Section 6.05.

**7.07 Collateral.** No Loan Party shall permit to exist any Lien or security interest on the Collateral other than (i) the Liens and security interests of the Lender and (b) Mortgage Permitted Liens.

#### **7.08 Anti-Corruption Laws**

. Directly or indirectly use the proceeds of any Loan for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anti-corruption legislation in other jurisdictions.

#### **7.09 Use of Financed Properties**

. Use any Financed Property for any purpose except for uses expressly permitted by Section 6.11.

### **ARTICLE VIII. EVENTS OF DEFAULT AND REMEDIES**

**8.01 Events of Default.** Any of the following shall constitute an Event of Default:

(a) Non-Payment. Any Borrower or any other Loan Party fails to pay (i) any principal of any Loan when and as the same shall become due and payable pursuant to the terms of this Agreement, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise, or (ii) within five (5) days after the same becomes due, any

interest on any Loan or any other amount due under this Agreement (other than principal of any Loan) when and as the same shall become due and payable; or

(b) Specific Covenants. The Company or any Borrower fails to perform or observe any term, covenant or agreement contained in any of (x) Section 6.01, 6.02(a) or (b), 6.03, or 6.05 (as it relates to maintenance of existence), of the Syndicated Credit Agreement as incorporated by reference in Article VI, (y) Section 6.01, 6.03, 6.04 or 6.05 or Article VII (including any covenant or agreement incorporated into Article VII by reference); or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after the giving of written notice to such Loan Party specifying the alleged default; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Company or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default. (i) The Company or any Subsidiary (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts and Indebtedness under the Syndicated Credit Agreement) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which the Company or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which the Company or any Subsidiary is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by the Company or such Subsidiary as a result thereof is greater than the Threshold Amount; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any of its Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its

property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) The Company or any Subsidiary becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within thirty (30) days after its issue or levy; or

(h) Judgments. There shall be entered against the Company or any of its Subsidiaries (i) one or more judgments or decrees in excess of the Threshold Amount in the aggregate at any one time outstanding for the Company and all its Subsidiaries or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 60 consecutive days during which such judgment is not satisfied and a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect, excluding (in the case of clause (i)) those judgments or decrees for which and to the extent that the Company or any such Subsidiary is insured and with respect to which the insurer has not contested or denied responsibility in writing (subject to usual deductibles); or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan, Multiemployer Plan or Multiple Employer Plan which has resulted or could reasonably be expected to result in liability of the Company under Title IV of ERISA to the Pension Plan, Multiemployer Plan, Multiple Employer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) the Company or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents. (i) Any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or (ii) any Security Instrument shall for any reason (other than pursuant to the terms thereof or as a result of the failure of the Lender to file UCC financing statements or UCC continuation statements) cease to create a valid security interest in the Collateral purported to be covered thereby or such security interest shall for any reason cease to be a perfected security interest with the priority provided therefor in such Security Instrument subject only to Mortgage Permitted Liens;

(k) Change of Control. There occurs any Change of Control; ~~or~~

(l) Default Under Syndicated Credit Agreement. Any “Event of Default” specified in the Syndicated Credit Agreement exists, after giving effect to any waiver or amendment thereof under the Syndicated Credit Agreement (it being agreed that each such “Event of Default” shall survive any termination, cancellation, discharge or replacement of the Syndicated [Credit Agreement](#)); or

(m) Default Under 2018 Real Estate Credit Agreement. Any “Event of Default” specified in the 2018 Real Estate Credit Agreement exists, after giving effect to any waiver or amendment thereof under the 2018 Real Estate Credit Agreement (it being agreed that each such

“Event of Default” shall survive any termination, cancellation, discharge or replacement of the 2018 Real Estate Credit Agreement).

**8.02 Remedies Upon Event of Default.** If any Event of Default occurs and is continuing, the Lender may take any or all of the following actions:

(a) declare the Commitment of the Lender to make Loans to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document with respect to the Loans to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Company and each Borrower;

(c) exercise all rights and remedies available to the Lender under the Loan Documents;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to any Borrower under the Bankruptcy Code of the United States, the obligation of the Lender to make Loans shall automatically terminate and the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable without further act of the Lender.

**8.03 Application of Funds.** After the exercise of remedies provided for in this Article VIII (or after the Loans have automatically become immediately due and payable), any amounts received on account of the Obligations shall be applied by the Lender in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Lender and amounts payable under Article III) payable to the Lender;

Second, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and other Obligations (other than in respect of Swap Contracts);

Third, on a pari passu basis, to payment of that portion of (a) the Obligations constituting unpaid principal of the Loans and (b) that portion of the Obligations constituting Obligations then owing under Secured Hedge Agreements, ratably among the Hedge Banks in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to the payment of all other Obligations of the Loan Parties owing under or in respect of the Loan Documents that are due and payable to the Lender on such date; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Company or as otherwise required by Law;

provided that, Excluded Swap Obligations with respect to any Loan Party shall not be paid with amounts received from such Loan Party or its assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Obligations otherwise set forth above in this Section.

Notwithstanding the foregoing, Obligations arising under Secured Hedge Agreements shall be excluded from the application described above if the Lender has not received written notice thereof, together with such supporting documentation as the Lender may request, from the applicable Hedge Bank. Excluded Swap Obligations with respect to any Loan Party shall not be paid with amounts received from such Loan Party, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Obligations otherwise set forth above in this Section.

#### ARTICLE IX. MISCELLANEOUS

**9.01 Amendments, Etc.** No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Company or any other Loan Party therefrom, shall be effective unless in writing signed by the Lender and the Company or the applicable Loan Party, as the case may be, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

#### **9.02 Notices; Effectiveness; Electronic Communication.**

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier or other electronic mail transmission to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 9.02 and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. The Lender or the Company may each, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Lender otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.



(c) Change of Address, Etc. Each of the Company and the Lender may change its address, facsimile number or telephone number or electronic mail address for notices and other communications hereunder by notice to the other parties hereto.

(d) Reliance by Lender. The Lender shall be entitled to rely and act upon any notices (including telephonic or electronic Loan Notices) purportedly given by or on behalf of the Company or any Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Company and each Borrower shall indemnify the Lender and its Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Company or any Borrower. All telephonic notices to and other telephonic communications with the Lender may be recorded by the Lender, and each of the parties hereto hereby consents to such recording.

**9.03 No Waiver; Cumulative Remedies; Enforcement.** No failure by the Lender, to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

**9.04 Expenses; Indemnity; Damage Waiver.**

(a) Costs and Expenses. The Company and each Borrower (jointly and severally) shall pay (i) all reasonable out-of-pocket expenses incurred by the Lender and its Affiliates (including, but not limited to, the reasonable fees, charges and disbursements of one law firm acting as outside counsel for the Lender and one law firm acting as local counsel in each jurisdiction where necessary, the costs of appraisals, environmental reports and reviews thereof, title work, recording fees, recording taxes and the costs of any other Real Estate Support Documents), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all reasonable out-of-pocket expenses incurred by the Lender (including the fees, charges and disbursements of any counsel for the Lender), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made hereunder, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) Indemnification by the Borrowers. The Company and each Borrower (jointly and severally) shall indemnify the Lender and each Related Party of the Lender (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (but limited, in the case of legal fees and expenses, to the reasonable and documented fees, disbursements and other charges of (i) one counsel for the Lender, and (ii) one local counsel in each relevant jurisdiction), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Company or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this

Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Company, any Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Company, any Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Company or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee, (y) result from a claim brought by the Company or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Company or such other Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (z) arise out of a dispute solely between or among Indemnitees that does not involve an act or omission by any Loan Party or any Loan Party's Affiliates other than any action, suit, proceeding or claim against any Indemnitee or any of its Related Parties in its capacity or in fulfilling its role as an agent or similar role under hereunder or under any other Loan Document. Without limiting the provisions of Section 3.01(c), this Section 9.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, neither the Company nor any Borrower shall assert, and each of the Company and each Borrower hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(d) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(e) Survival. The agreements in this Section and the indemnity provisions of Section 9.02(e) shall survive the termination of the Commitment and the repayment, satisfaction or discharge of all the other Obligations.

**9.05 Payments Set Aside.** To the extent that any payment by or on behalf of the Company or any Borrower is made to the Lender, or the Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated,

declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

#### **9.06 Successors and Assigns.**

(a) Successors and Assigns Generally. This Agreement and the other Loan Documents shall be binding on and shall inure to the benefit of the parties hereto and thereto and their respective successors and assigns permitted hereby, except that neither the Company nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the Lender's prior written consent. The Lender may at any time (i) assign all or any part of its rights and obligations hereunder to any other Person, and (ii) grant to any other Person participating interests in all or part of its rights and obligations hereunder, provided, however, the consent of the Company (such consent not to be unreasonably withheld) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to an Affiliate of a Lender or an Approved Fund; provided further that the Company shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Lender within ten (10) Business Days after having received notice thereof. The Company and each Borrower agrees to execute any documents reasonably requested by the Lender in connection with any such assignment. All information provided by or on behalf of the Company or any Borrower to the Lender or its Affiliates may be furnished by the Lender to its Affiliates and to any actual or proposed assignee or participant.

(b) Certain Pledges. The Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under the Master Note) to secure obligations of the Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release the Lender from any of its obligations hereunder or substitute any such pledgee or assignee for the Lender as a party hereto.

**9.07 Treatment of Certain Information; Confidentiality.** The Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, trustees, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or participant in, or any prospective assignee of or participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Company or any Borrower and its obligations, (g) on a confidential basis to (i) any rating agency in connection with rating the Company or its Subsidiaries or the credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any

similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (h) with the consent of the Company or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Lender or any of its Affiliates on a nonconfidential basis from a source other than the Company. For purposes of this Section, "Information" means all information received from the Company or any Subsidiary relating to Company or any Subsidiary or any of its respective businesses, other than any such information that is available to the Lender on a nonconfidential basis prior to disclosure by the Company or any Subsidiary, provided that, in the case of information received from the Company or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

The Lender acknowledges that (a) the Information may include material non-public information concerning the Company or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

**9.08 Right of Setoff.** If an Event of Default shall have occurred and be continuing, the Lender and its respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by the Lender, or any such Affiliate to or for the credit or the account of the Company or any Loan Party against any and all of the obligations of the Company or any Loan Party, as applicable, now or hereafter existing under this Agreement or any other Loan Document to the Lender or its Affiliates, irrespective of whether or not the Lender or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Company or such Loan Party may be contingent or unmatured, or are owed to a branch, office or Affiliate of the Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; The rights of the Lender, and its Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that the Lender, or its Affiliates may have. The Lender agrees to notify the Company promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

**9.09 Interest Rate Limitation.** Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Company or the Borrowers. In determining whether the interest contracted for, charged, or received by Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

**9.10 Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Lender and when the Lender shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g. “pdf or “tif”) shall be effective as delivery of a manually executed counterpart of this Agreement.

**9.11 Survival of Representations and Warranties.** All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Lender, regardless of any investigation made by the Lender or on their behalf and notwithstanding that the Lender may have had notice or knowledge of any Default at the time of any Loan, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

**9.12 Severability.** If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**9.13 Governing Law; Jurisdiction; Etc.**

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. THE COMPANY AND EACH BORROWER IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN

DOCUMENT SHALL AFFECT ANY RIGHT THAT THE LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE COMPANY OR ANY BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) **WAIVER OF VENUE.** THE COMPANY AND EACH BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) **SERVICE OF PROCESS.** EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 9.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

**9.14 Waiver of Jury Trial.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**9.15 Electronic Execution of Assignments and Certain Other Documents.** The words “execution,” “signed,” “signature,” and words of like import in any amendment, assignment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Lender, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**9.16 USA PATRIOT Act.** The Lender hereby notifies the Company and the other Borrowers that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record

information that identifies the Company and the other Borrowers, which information includes the name and address of the Company and the other Borrowers and other information that will allow such Lender to identify the Company and each other Borrower in accordance with the Act. The Company and each other Borrower shall, promptly following a request by the Lender, provide all documentation and other information that the Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Act.

**9.17 Designated Senior Debt.** Each party acknowledges and agrees that the Indebtedness under the Loan Documents is “Designated Senior Debt” (or any similar term) under, and as defined in, each of the Indentures, any other indenture and any other Subordinated Indebtedness.

**9.18 Keepwell.** Each Borrower that is a Qualified ECP Guarantor at the time the joint and several liability of any Specified Loan Party (pursuant to Section 2.10), or the Guaranty or the grant of a Lien under the Loan Documents, in each case, by any Specified Loan Party, becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Borrower’s obligations and undertakings under this Article X voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Borrower under this Section shall remain in full force and effect until the Obligations have been indefeasibly paid and performed in full. Each Borrower intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a “keepwell, support or other agreement” for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

**9.19**

## Releases.

(a) On the Facility Termination Date, the Collateral shall be released from the Liens created by the Loan Documents, without delivery of any instrument or performance of any act by any party, and all rights to the Collateral shall revert to the Loan Parties, except for Collateral as to which the Lender has exercised any remedies. At the request and sole expense of any Loan Party following the Facility Termination Date, the Lender shall execute and deliver to such Loan Party such documents as such Loan Party shall reasonably request to evidence such payment and release.

(b) Any of the Collateral sold, transferred or otherwise disposed of by any Loan Party in a Permitted Financed Property Disposition, shall be transferred free of the security interest created hereby on such Collateral, and such security interest shall automatically terminate upon such permitted disposition, in each case upon the satisfaction of any conditions set forth in the Loan Documents with respect to such Permitted Financed Property Disposition. The Lender, at the request and sole expense of such Loan Party, shall execute and deliver to such Loan Party all releases or other documents reasonably necessary to evidence such release of the Liens created under the Loan Documents on such Collateral. Upon a Permitted Financed Property Disposition, the property sold, transferred or otherwise disposed of in such Permitted Financed Property Disposition shall immediately cease to be a Financed Property.

**9.20 Acknowledgement Regarding Any Supported QFCs.** To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, “QFC Credit Support”, and each such QFC, a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.



(b) As used in this Section 9.20, the following terms have the following meanings:

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Covered Entity” means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

*[Signature pages follow.]*

**SECOND AMENDMENT TO  
AMENDED AND RESTATED MASTER LOAN AGREEMENT**

THIS SECOND AMENDMENT TO AMENDED AND RESTATED MASTER LOAN AGREEMENT (this "Amendment") is entered into as of June 1, 2022, by and between by and between ASBURY AUTOMOTIVE ARKANSAS DEALERSHIP HOLDINGS L.L.C., a Delaware limited liability company, MCDAVID PLANO-ACRA, L.L.C., a Delaware limited liability company, ATLANTA REAL ESTATE HOLDINGS L.L.C., a Delaware limited liability company, ASBURY DELAND HUND, LLC, a Delaware limited liability company, AVENUES MOTORS, LTD., a Florida limited partnership (successor by merger to 10859 PHILIPS HIGHWAY L.L.C.), C&O PROPERTIES, LTD., a Florida limited partnership, ASBURY AUTOMOTIVE ST. LOUIS, L.L.C., a Delaware limited liability company, ASBURY AUTOMOTIVE NORTH CAROLINA REAL ESTATE HOLDINGS L.L.C., a Delaware limited liability company, CROWN GPG L.L.C., a Delaware limited liability company, ASBURY AUTOMOTIVE MISSISSIPPI LLC, a Delaware limited liability company, Q AUTOMOTIVE JACKSONVILLE FL, LLC, a Delaware limited liability company, ASBURY ATLANTA FORD, LLC, a Delaware limited liability company, and ASBURY FT. WORTH FORD, LLC, a Delaware limited liability company (each referred to herein individually and collectively as "Borrower"), and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association (together with its successors and assigns, "Lender").

**RECITALS**

- A. Borrower is currently indebted to Lender pursuant to the terms and conditions of that certain Amended and Restated Master Loan Agreement between Borrower and Lender dated as of February 3, 2015, as amended from time to time (the "Loan Agreement").
- B. Lender and Borrower have agreed to certain changes in the terms and conditions set forth in the Loan Agreement and have agreed to amend the Loan Agreement to reflect said changes.
- C. All terms used but not defined herein shall have the meanings provided in the Loan Agreement.

NOW, THEREFORE, with the foregoing recitals incorporated by reference and made a part hereof, and intending to be legally bound, and for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**1. AMENDMENT TO LOAN AGREEMENT.**

1.1. The Loan Agreement is hereby amended by adding the following definitions:

"Benchmark Floor" means a rate of interest equal to zero percent (0%).

"Daily Simple SOFR" means, with respect to any day (a "SOFR Rate Day"), a rate per annum equal to SOFR for the day (such day, the "SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the

SOFR Administrator on the SOFR Administrator's Website; provided, however, that if Daily Simple SOFR determined as provided above would be less than the Benchmark Floor, then Daily Simple SOFR shall be deemed to be the Benchmark Floor. If by 5:00 p.m. (New York City time) on the second (2<sup>nd</sup>) U.S. Government Securities Business Day immediately following any SOFR Determination Day, SOFR in respect of such SOFR Determination Day has not been published on the SOFR Administrator's Website and a Benchmark Replacement Date with respect to Daily Simple SOFR has not occurred, then SOFR for such SOFR Determination Day will be SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which SOFR was published on the SOFR Administrator's Website; provided that any SOFR determined pursuant to this sentence shall be utilized for purposes of calculation of Daily Simple SOFR for no more than three (3) consecutive SOFR Rate Days.

"Federal Reserve Business Day" means any day that is not a Saturday, Sunday or other day on which the Federal Reserve Bank of New York is closed.

"Prime Rate" means at any time the rate of interest most recently announced within Bank at its principal office as its prime rate, with the understanding that the Prime Rate is one of Bank's base rates and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto, and is evidenced by the recording thereof after its announcement in such internal publication or publications as Bank may designate; provided, however, that any borrowings hereunder accruing interest determined in relation to the Prime Rate shall not be less than one percent (1.0%) at any time, regardless of fluctuations in the Prime Rate that may cause the rate of interest applicable to the Note to be less than one percent (1.0%).

"SOFR" means a rate per annum equal to the secured overnight financing rate as administered by the SOFR Administrator.

"SOFR Administrator" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"SOFR Administrator's Website" means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"SOFR Loan" means a Loan, or portion thereof, during any period in which it bears interest at a rate based upon SOFR.

"U.S. Government Securities Business Day" means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association, or any successor thereto, recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

1.2 The Loan Agreement is hereby amended by deleting the definition of “Applicable Margin” from Section 1.1 in its entirety and inserting the following new definition of “Applicable Margin” in lieu thereof:

“Applicable Margin’ means as to any portion of any Loan that is a LIBOR Loan or a SOFR Loan, 1.85% per annum.”

1.3 The Loan Agreement is hereby amended by deleting Section 2.2 in its entirety and substituting the following new Section 2.2 in lieu thereof:

“Interest. Each Borrower agrees to pay interest in respect of all unpaid principal amounts of the Loan from the respective dates such principal amounts are advanced until paid (whether at stated maturity, on acceleration or otherwise) at (a) from November 16, 2018 through and including May 31, 2022, the Applicable Margin for such LIBOR Loan plus LIBOR. Such interest rate shall be fixed for each LIBOR Period for which it is determined and shall apply for that Loan; and, (b) as of June 1, 2022 and thereafter, the Applicable Margin plus Daily Simple SOFR plus 0.10%.”

1.4 The Loan Agreement is hereby amended by adding the following new Section 2.10:

“**2.10. Taxes and Regulatory Costs**. Borrower shall pay to Bank immediately upon demand, in addition to any other amounts due or to become due hereunder, any and all (i) withholdings, interest equalization taxes, stamp taxes or other taxes (except income and franchise taxes) imposed by any domestic or foreign governmental authority and related in any manner to SOFR or Daily Simple SOFR , and (ii) costs, expenses and liabilities arising from or in connection with reserve percentages prescribed by the Board of Governors of the Federal Reserve System (or any successor) for "Eurocurrency Liabilities" (as defined in Regulation D of the Board of Governors of the Federal Reserve System, as amended), assessment rates imposed by the Federal Deposit Insurance Corporation, or similar requirements or costs imposed by any domestic or foreign governmental authority or resulting from compliance by Bank with any request or directive (whether or not having the force of law) from any central bank or other governmental authority and related in any manner to SOFR or Daily Simple SOFR and (iii) taxes, stamp taxes, and insurance payable by reason of the execution and delivery of the Note, the Loan Agreement, and any loan documents. In determining which of the foregoing are attributable to any SOFR or Daily Simple SOFR option available to Borrower hereunder, any reasonable allocation made by Bank among its operations shall be conclusive and binding upon Borrower.”

1.5 The Loan Agreement is hereby amended by adding the following new Section 2.11:

“**2.11. Inability to Determine Interest Rates; Illegality**. Subject to the Benchmark Replacement Provisions below, if Bank determines (any determination of which shall be conclusive and binding on Borrower) that either (i) Daily Simple SOFR cannot be determined pursuant to the definition thereof other than as a result of a Benchmark Transition Event (an “Inability Determination”) or (ii) any law has made it unlawful, or that any governmental authority has asserted that it is unlawful, for Bank to make or maintain an advance based on SOFR or Daily Simple SOFR , or to determine or charge interest rates based upon SOFR or Daily

Simple SOFR (an “Illegality Determination”), then Bank will so notify Borrower. The outstanding principal balance of the Note shall bear interest (computed on the basis of a 360-day year, actual days elapsed) at a fluctuating rate per annum determined by Bank to be equal to the Prime Rate in effect from time to time, from the date of an Inability Determination or an Illegality Determination until Bank revokes such Inability Determination or notifies Borrower that the circumstances giving rise to such Illegality Determination no longer exist, as applicable. When interest is determined in relation to the Prime Rate, each change in the rate of interest hereunder shall become effective on the date each Prime Rate change is announced within Bank. Notwithstanding any of the foregoing to the contrary, if a Benchmark Replacement is subsequently determined in accordance with applicable Benchmark Replacement Provisions, that Benchmark Replacement, plus any applicable margin, will become effective on the Benchmark Replacement Date and will then supersede the Prime Rate and margin determined in accordance with this provision.

#### BENCHMARK REPLACEMENT PROVISIONS:

Notwithstanding anything to the contrary contained in the Note or in any related loan document (for the purposes of these Benchmark Replacement Provisions, a swap agreement by and between Borrower and Bank or any of its affiliates is not a loan document):

(a) Benchmark Replacement. If a Benchmark Transition Event occurs, the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes under the Note or under any related loan document. Any Benchmark Replacement will become effective on the applicable Benchmark Replacement Date without any further action or consent of Borrower.

(b) Benchmark Replacement Conforming Changes. Bank will have the right to make Benchmark Replacement Conforming Changes from time to time and any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of Borrower.

(c) Notices; Standards for Decisions and Determinations. Bank will promptly notify Borrower of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by Bank pursuant to these Benchmark Replacement Provisions, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and will be made in its sole discretion and without Borrower consent.

(d) Certain Defined Terms. As used in the Note, each of the following capitalized terms has the meaning given to such term below:

(i) ‘Benchmark’ means, initially, Daily Simple SOFR; provided, however, that if a Benchmark Transition Event has occurred with respect to Daily Simple SOFR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark

Replacement to the extent that such Benchmark Replacement has become effective pursuant to the provisions of the Note.

(ii) ‘Benchmark Administrator’ means, initially, the SOFR Administrator or any successor administrator of the then-current Benchmark or any insolvency or resolution official with authority over such administrator.

(iii) ‘Benchmark Replacement’ means the sum of: (A) the alternate rate of interest that has been selected by Bank as the replacement for the then-current Benchmark; and (B) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by Bank, in each case, giving due consideration to (x) any selection or recommendation by the Relevant Governmental Body at such time for a replacement rate, the mechanism for determining such a rate, the methodology or conventions applicable to such rate, or the spread adjustment, or method for calculating or determining such spread adjustment, for such rate, or (y) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to the then-current Benchmark, the methodology or conventions applicable to such rate, or the spread adjustment, or method for calculating or determining such spread adjustment, for such alternate rate for U.S. dollar-denominated syndicated or bilateral credit facilities at such time; provided, however, that if the Benchmark Replacement as determined as provided above would be less than the Benchmark Floor, then the Benchmark Replacement shall be deemed to be the Benchmark Floor, subject to any other applicable floor rate provision.

(iv) ‘Benchmark Replacement Conforming Changes’ means any technical, administrative or operational changes (including, without limitation, changes to the timing and frequency of determining rates and making payments of interest, prepayment provisions and other technical, administrative or operational matters) that Bank decides (in consultation with Borrower) may be appropriate to reflect the adoption and implementation of a Benchmark Replacement and to permit the administration thereof by Bank.

(v) ‘Benchmark Replacement Date’ means the date specified by Bank in a notice to Borrower following a Benchmark Transition Event.

(vi) ‘Benchmark Transition Event’ means the occurrence of one or more of the following events with respect to the then-current Benchmark: a public statement or publication of information by or on behalf of the Benchmark Administrator or a regulatory supervisor for the Benchmark Administrator announcing that (A) the Benchmark Administrator has ceased or will cease to provide the Benchmark permanently or indefinitely or (B) the Benchmark is no longer, or as of a specified future date will no longer be, representative of underlying markets.

‘Relevant Governmental Body’ means the Board of Governors of the Federal Reserve System and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System and/or the Federal Reserve Bank of New York or any successor thereto.”

2. **FULL FORCE AND EFFECT.** Except as specifically provided herein, all terms and conditions of the Loan Agreement remain in full force and effect, without waiver or modification. This Amendment and the Loan Agreement shall be read together, as one document.

3. **REAFFIRMATION.** Borrower hereby remakes all representations and warranties contained in the Loan Agreement and reaffirms all covenants set forth therein. Borrower further certifies that as of the date of this Amendment there exists no Event of Default as defined in the Loan Agreement, nor any condition, act or event which with the giving of notice or the passage of time or both would constitute any such Event of Default.

(signatures on following pages)

**IN WITNESS WHEREOF**, the parties have executed this Second Amendment to Amended and Restated Master Loan Agreement as of June 1, 2022.

|                 |  |
|-----------------|--|
| Property 1      | ASBURY AUTOMOTIVE ARKANSAS DEALERSHIP HOLDINGS L.L.C., a Delaware limited liability company<br><br>By: <u>    /s/ Karen Reid    </u><br>Name: Karen Reid<br>Title: Vice President and Treasurer                      |
| Property 2      | MCDavid PLANO-ACRA, L.L.C., a Delaware limited liability company<br><br>By: <u>    /s/ Karen Reid    </u><br>Name: Karen Reid<br>Title: Vice President and Treasurer   |
| Property 3 & 12 | ATLANTA REAL ESTATE HOLDINGS L.L.C., a Delaware limited liability company<br><br>By: <u>    /s/ Karen Reid    </u><br>Name: Karen Reid<br>Title: Vice President and Treasurer  |
| Property 4      | ASBURY DELAND HUND, LLC a Delaware limited liability company<br><br>By: <u>    /s/ Karen Reid    </u><br>Name: Karen Reid<br>Title: Vice President and Treasurer   |
| Property 5      | AVENUES MOTORS, LTD., a Florida limited partnership<br><br>By: Asbury Jax Management L.L.C., its general partner<br><br>By: <u>    /s/ Karen Reid    </u><br>Name: Karen Reid<br>Title: Vice President and Treasurer |
| Property 6 & 11 | C&O PROPERTIES, LTD., a Florida limited partnership<br><br>By: Asbury Jax Management L.L.C., its general partner<br><br>By: <u>    /s/ Karen Reid    </u><br>Name: Karen Reid<br>Title: Vice President and Treasurer |



Property 7 & 8

ASBURY AUTOMOTIVE ST. LOUIS, L.L.C., a Delaware limited liability company

By: /s/ Karen Reid

Name: Karen Reid

Title: Vice President and Treasurer

Property 9, 10, 10a & 13a

ASBURY AUTOMOTIVE NORTH CAROLINA REAL ESTATE HOLDINGS L.L.C., a Delaware limited liability company

By: /s/ Karen Reid

Name: Karen Reid

Title: Vice President and Treasurer

Property 13

CROWN GPG L.L.C., a Delaware limited liability company

By: /s/ Karen Reid

Name: Karen Reid

Title: Vice President and Treasurer

Property 14 & 14a

ASBURY AUTOMOTIVE MISSISSIPPI L.L.C., a Delaware limited liability company

By: /s/ Karen Reid

Name: Karen Reid

Title: Vice President and Treasurer

Property 15

Q AUTOMOTIVE JACKSONVILLE FL, LLC, a Delaware limited liability company

By: /s/ Karen Reid

Name: Karen Reid

Title: Vice President and Treasurer

Property 16

ASBURY ATLANTA FORD, L.L.C., a Delaware limited liability company

By: /s/ Karen Reid  
Name: Karen Reid  
Title: Vice President and Treasurer

Property 17

ASBURY FT. WORTH FORD, LLC, a Delaware limited liability company

By: /s/ Karen Reid  
Name: Karen Reid  
Title: Vice President and Treasurer

**Accepted in Winston-Salem, North Carolina:**

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: /s/ Chad McNeill  
Name: Chad McNeill  
Title: Senior Vice President

**SECOND AMENDMENT TO CREDIT AGREEMENT**

This **SECOND AMENDMENT TO CREDIT AGREEMENT**, dated as of May 25, 2022 (this "Amendment") is by and among **ASBURY AUTOMOTIVE GROUP, INC.**, a Delaware corporation ("Company"), certain Subsidiaries of the Company party hereto as Borrowers (each a "Borrower"), the Guarantors party hereto, the Lenders (as defined below), and **BANK OF AMERICA, N.A.**, as Administrative Agent.

**W I T N E S S E T H:**

**WHEREAS**, the Administrative Agent, certain financial institutions from time to time party thereto as lenders (the "Lenders"), the Company and the Borrowers are parties to that certain Credit Agreement, dated as of May 10, 2021, as amended by that certain First Amendment to Credit Agreement, dated as of December 29, 2021 (as otherwise amended, supplemented or modified from time to time, the "Existing Credit Agreement"; capitalized terms used but not defined herein shall have the meanings set forth in the Amended Credit Agreement).

**WHEREAS**, the Company and the Borrowers have requested certain amendments to the Credit Agreement, as more specifically set forth herein.

**WHEREAS**, the Administrative Agent and the Lenders have agreed to such requests, subject to the terms and conditions of this Amendment.

**WHEREAS**, by this Amendment, the Administrative Agent, the Lenders, the Company and the Borrowers desire and intend to evidence the amendments set forth herein.

**NOW, THEREFORE**, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

**SECTION 1 - DEFINITIONS; AMENDMENTS**

**1.1 Amendments to Credit Agreement.** Simultaneously with the Second Amendment Effective Date (as defined herein), the parties hereby agree that:

(a) the Existing Credit Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text), each as set forth in the pages of a conformed copy of the Existing Credit Agreement, as amended hereby, attached as Annex A hereto (as so amended, the "Amended Credit Agreement" and the Amended Credit Agreement as otherwise amended, restated, supplemented or otherwise modified from time to time on or after the date hereof, the "Credit Agreement");

(b) new Exhibit J to the Credit Agreement, Notice of Prepayment, in the form of the Exhibit J attached hereto as Annex B hereto shall be added to the Credit Agreement; and

(c) This Amendment is not a novation of the Existing Credit Agreement or of any credit facility or guaranty provided thereunder or in respect thereof. Notwithstanding that the cover page of the Amended Credit Agreement is dated "as of May 10, 2021" and Section 4.01 of the Amended Credit Agreement attached hereto contains those conditions which were applicable to the initial Closing Date of May 10, 2021, the changes to the Existing Credit Agreement effected by this Amendment shall be effective as of the satisfaction to the conditions to effectiveness set forth in Section 2.1 of this Amendment. The signature pages contained may be left off of the Amended Credit Agreement.

## SECTION 2 - CONDITIONS PRECEDENT TO EFFECTIVENESS

2.1 This Amendment shall become effective upon the satisfaction or waiver by the Administrative Agent and Lenders of the following conditions precedent (the date of such satisfaction or waiver, the "Second Amendment Effective Date"):

(a) The Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals), shall be properly executed by a Responsible Officer of each Loan Party and by the Administrative Agent and each Lender, each dated the Second Amendment Effective Date and each in form and substance satisfactory to the Administrative Agent and each of the Lenders:

(i) executed counterparts of this Amendment from the Administrative Agent, the Borrowers, the Guarantors, each Lender, in each case sufficient in number for distribution to the Administrative Agent, the Administrative Agent's counsel and the Company.

## SECTION 3 - MISCELLANEOUS

3.1 **Binding Effect.** This Amendment shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of Lender.

3.2 **Affirmation of Borrowers and Guarantors.** Each Borrower and each Guarantor hereby (a) consents to the amendments and modifications to the Credit Agreement effected hereby, and (b) confirms and agrees that, notwithstanding the effectiveness of this Amendment, each Loan Document to which such Borrower or such Guarantor, as applicable, is a party is, and the obligations of such Borrower or such Guarantor, as applicable, contained in the Credit Agreement, as amended and modified hereby, or in any other Loan Documents to which it is a party are, and shall continue to be, in full force and effect and are hereby ratified and confirmed in all respects, in each case as amended and modified by this Amendment. Without limiting the generality of the foregoing, the execution of this Amendment shall not constitute a novation or discharge of, any obligation of any Loan Party under the Credit Agreement or any other Loan Document, and each Loan Party agrees that the Security Instruments and any other documents or instruments executed, filed or recorded in connection therewith, shall remain outstanding and in full force and effect, and all of the Collateral described therein and Liens granted in favor of the Administrative Agent created thereunder do and shall continue to secure the Obligations and the "Obligations", "Guarantied Obligations" or "Secured Obligations" (as those terms are defined in the Company Guaranty and the Subsidiary Guaranty) and any other obligations to the extent provided in the Security Instruments and that all such Liens continue to be perfected as security for the Obligations and the "Obligations", "Guarantied Obligations" or "Secured Obligations" (as those terms are defined in the Company Guaranty and the Subsidiary Guaranty) and any other obligations secured thereby.

### 3.3 **Representations and Warranties.**

(a) This Amendment has been duly authorized, executed and delivered by each of the Loan Parties party hereto and constitutes a legal, valid and binding obligation of each such party, except as may be limited by general principles of equity or by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally.

(b) The representations and warranties made by each Loan Party in Article V of the Credit Agreement and in each of the other Loan Documents to which such Loan Party is a party are true and correct in all material respects (or if qualified by materiality or Material Adverse Effect, in all respects) on and as of the Second Amendment Effective Date, except to the extent that such representations and warranties expressly relate to an earlier date in which case they are true and correct in all material respects (or if qualified by materiality or Material Adverse Effect, in all respects) as of such earlier date.

(c) No Default or Event of Default has occurred and is continuing as of the Second Amendment Effective Date.

**3.4 Severability.** In case any provision in or obligation hereunder shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

**3.5 Reference to and Effect on Credit Agreement and the Loan Documents.**

(a) On and after the effectiveness of this Amendment, each reference in the Credit Agreement to “this Agreement”, “hereunder”, “hereof” or words of like import referring to the Credit Agreement, and each reference in the Notes and each of the other Loan Documents to “the Credit Agreement”, “thereunder”, “thereof” or words of like import referring to the Credit Agreement, shall mean and be a reference to the Credit Agreement, as amended and modified by this Amendment and as further amended, restated or modified from time to time in accordance with the terms thereof.

(b) The Credit Agreement and each of the other Loan Documents, as specifically amended and modified by this Amendment, are and shall continue to be in full force and effect and are hereby in all respects ratified and confirmed.

(c) The Administrative Agent, the Lenders and the Loan Parties agree that this Amendment shall be a Loan Document for all purposes of the Credit Agreement (as specifically amended by this Amendment) and the other Loan Documents.

**3.6 No Waiver.** The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, constitute a waiver or novation of any right, power or remedy of any Lender or the Administrative Agent under any of the Loan Documents, nor constitute a waiver or novation of any provision of any of the Loan Documents. This Amendment is limited to the matters expressly referred to herein and shall not constitute an amendment or waiver of, or an indication of the Lender's willingness to amend or waive, any other provisions of the Credit Agreement or the same provisions for any other date or purpose.

**3.7 Waiver, Modification, Etc.** No provision or term of this Amendment may be modified, altered, waived, discharged or terminated orally, but only by an instrument in writing executed by the party against whom such modification, alteration, waiver, discharge or termination is sought to be enforced.

**3.8 Headings.** Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

**3.9 GOVERNING LAW.** THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

**3.10 Counterparts.** This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are attached to the same document. Delivery of an executed signature page of this Amendment by facsimile transmission or electronic mail shall be as effective as delivery of a manually executed counterpart hereof.

*(Signature Pages Follow)*

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed as of the date first above written.

**COMPANY:**  
**ASBURY AUTOMOTIVE GROUP, INC.**

By: /s/ Karen Reid  
Typed Name: Karen Reid  
Typed Title: Vice President, Corporate FP&A  
and Treasurer

**BORROWERS:**  
**ASBURY DALLAS MB, LLC**  
**ASBURY FORT WORTH MB, LLC**  
**ASBURY ARLINGTON MB, LLC**  
**ASBURY DALLAS VOL, LLC**  
**ASBURY TX AUCTION, LLC**  
**ASBURY AUTOMOTIVE TEXAS L.L.C.**

By: /s/ Karen Reid  
Typed Name: Karen Reid  
Typed Title: Treasurer

Asbury Automotive Group, Inc.  
SECOND AMENDMENT TO CREDIT AGREEMENT  
Signature Page

**SUBSIDIARY GUARANTORS:**  
**ASBURY DALLAS POR, LLC**

By: /s/ Karen Reid  
Typed Name: Karen Reid  
Typed Title: Treasurer

Asbury Automotive Group, Inc.  
SECOND AMENDMENT TO CREDIT AGREEMENT  
Signature Page

**BANK OF AMERICA, N.A.,**  
as Administrative Agent

By: /s/ David T. Smith

Typed Name: David T. Smith

Typed Title: Senior Vice President

**BANK OF AMERICA, N.A.,**  
as a Lender

By: /s/ David T. Smith

Typed Name: David T. Smith

Typed Title: Senior Vice President

Asbury Automotive Group, Inc.  
SECOND AMENDMENT TO CREDIT AGREEMENT  
Signature Page



**Amended Credit Agreement**

See attached.

**Exhibit J**  
**Notice of Loan Prepayment**

See attached.

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*(2021 Real Estate Facility)*

**CREDIT AGREEMENT**

Dated as of May 10, 2021

among

**ASBURY AUTOMOTIVE GROUP, INC.,**  
as the Company,

and

**CERTAIN OF ITS SUBSIDIARIES,**  
as Borrowers

**BANK OF AMERICA, N.A.,**  
as Administrative Agent,

and

**THE OTHER LENDERS PARTY HERETO**

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**BOFA SECURITIES, INC.,**  
as Sole Lead Arranger and Sole Bookrunner

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## CREDIT AGREEMENT

This CREDIT AGREEMENT (“Agreement”) is entered into as of May 10, 2021, among ASBURY AUTOMOTIVE GROUP, INC., a Delaware corporation (the “Company”), certain Subsidiaries of the Company party hereto as Borrowers (each a “Borrower” and collectively the “Borrowers”), each lender from time to time party hereto (collectively, the “Lenders” and individually, a “Lender”), and BANK OF AMERICA, N.A., as Administrative Agent.

The Company and the Borrowers have (a) advised the Administrative Agent and the Lenders of their desire to exercise the purchase options under the leases listed on Schedule 1.01(L) (the “Project Star Leases”) and thereby acquire a fee simple interest in the Financed Properties (such acquisition, the “Project Star Acquisition”) from Kings Road Realty Ltd., PPJ Land LLC, PPA Realty, Ltd., PP Real Estate, Ltd., PPM Realty Ltd., PPMBBA Realty LP, and 350 Phelps Realty LP (collectively, the “Project Star Sellers”) and (b) requested that the Lenders make loans and other financial accommodations to the Borrowers in an aggregate amount of up to \$184,365,000 which will be used to consummate the Project Star Acquisition.

The Lenders have agreed to make such loans to the Loan Parties on the terms and subject to the conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

### ARTICLE I. DEFINITIONS AND ACCOUNTING TERMS

#### 1.01 Defined Terms

. As used in this Agreement, the following terms shall have the meanings set forth below:

“Account Debtor” means each Person obligated in any way on or in connection with an Account, chattel paper or a general intangible (including a payment intangible).

“Acquisition” means the acquisition of (i) a controlling equity interest or other controlling ownership interest in another Person (including the purchase of an option, warrant or convertible or similar type security to acquire such a controlling interest at the time it becomes exercisable by the holder thereof), whether by purchase of such equity or other ownership interest or upon the exercise of an option or warrant for, or conversion of securities into, such equity or other ownership interest, (ii) assets of another Person which constitute all or substantially all of the assets of such Person or of a line or lines of business conducted by or a vehicle franchise or vehicle brand licensed or owned by such Person, or (iii) assets constituting a vehicle dealership.

“Added Property” has the meaning specified in the definition of “Collateral Substitution”.

“Adjusted FIRREA Appraisal Value” means, with respect to a Financed Property, the value set forth for such Financed Property in the most recent FIRREA Appraisal, as accepted by the Administrative Agent following its internal review and, if applicable, adjustment thereof by the Administrative Agent, based on criteria and factors then generally used and considered by the Administrative Agent in determining the value of similar real estate properties and any applicable rules or regulations adopted by any Governmental Authority. The Adjusted FIRREA Appraisal Value of each Closing Date Financed Property is set forth on Schedule 1.01(C).

“Administrative Agent” means Bank of America in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify to the Company and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Affiliate” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Aggregate Term Loan Commitments” means, collectively, the Lenders’ obligations to make the Term Loan to the Borrowers pursuant to Section 2.01 in an aggregate principal amount equal to \$184,365,000.

“Agreement” has the meaning specified in the introductory paragraph hereto.

“Applicable Four-Quarter Period” means with respect to any date of determination, the four-quarter period most recently ended on or prior to such date for which internal financial statements are available.

“Applicable Percentage” means:

(a) on or prior to the Closing Date, the percentage (carried out to the ninth decimal place) of the Aggregate Term Loan Commitments represented by such Lender’s Term Loan Commitment at such time, subject to adjustment as provided in Section 2.12, and (b) thereafter, the percentage (carried out to the ninth decimal place) of the aggregate Term Loans at such time represented by the principal amount of such Lender’s Term Loans at such time.

If the commitment of each Lender has been terminated pursuant to Section 8.02 or if the Aggregate Term Loan Commitments have expired, then the Applicable Percentage of each Lender shall be determined based on the Applicable Percentage of such Lender most recently in effect, giving effect to any subsequent assignments and to any Lender’s status as a Defaulting Lender at the time of determination. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“Applicable Property Disposition Prepayment Amount” means, on any date with respect to any Financed Property that is sold in whole or in part pursuant to a Permitted Financed Property Disposition, the excess (if any) of (a) the outstanding principal amount of all Loans on such date over (b) an amount equal to 75% of the aggregate Adjusted FIRREA Appraisal Values of all other Financed Properties remaining in the Property Pool.

“Applicable Rate” means 0.65% for Base Rate Loans and 1.65% for ~~Eurodollar Rate~~ Daily Simple SOFR Loans.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arranger” means BofA Securities, Inc., in its capacity as sole lead arranger and sole bookrunner.

“Assignee Group” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit C or any other form

(including electronic documentation generated by use of an electronic platform) approved by the Administrative Agent.

“Attributable Indebtedness” means, on any date, (a) in respect of any capital lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a capital lease; provided that (a) for purposes of determining compliance with any provision of this Agreement, the determination of whether a lease is to be treated as an operating lease or capital lease shall be made without giving effect to any change in accounting for leases pursuant to GAAP resulting from the implementation of Financial Accounting Standards Board ASU No. 2016-02, Leases (Topic 842), to the extent such adoption would require treating any lease (or similar arrangement conveying the right to use) as a capital lease where such lease (or similar arrangement) would not have been required to be so treated under GAAP as in effect on December 31, 2015.

“Audited Financial Statements” means the audited consolidated balance sheet of the Company and its Subsidiaries for the fiscal year ended December 31, 2020, and the related consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of the Company and its Subsidiaries, including the notes thereto.

“Automatic Debit Date” means the first Business Day of each calendar month following the Closing Date, provided that if such day is not a Business Day, the respective Automatic Debit Date shall be the next succeeding Business Day.

~~“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate, any tenor for such Benchmark that is or may be used for determining the length of an Interest Period or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date.~~

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“Bail-In Legislation” means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, rule, regulation or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Bank of America” means Bank of America, N.A. and its successors.

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate,” and (c) ~~the Eurodollar Rate~~ Daily Simple SOFR plus 1.00%, and (d) 1.00%. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change. If the Base Rate is being used as an alternate rate of interest pursuant to Section 3.03 hereof, then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above.

“Base Rate Loan” means a Term Loan that bears interest based on the Base Rate.

~~“Benchmark” means, initially, LIBOR; provided that if a replacement of the Benchmark has occurred pursuant to Section 3.03(c) then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate. Any reference to “Benchmark” shall include, as applicable, the published component used in the calculation thereof.~~

~~“Benchmark Replacement” means:~~

~~(a) For purposes of Section 3.03(c)(i), the first alternative set forth below that can be determined by the Administrative Agent:~~

~~(i) the sum of: (A) Term SOFR and (B) 0.11448% (11.448 basis points) for an Available Tenor of one month’s duration, 0.26161% (26.161 basis points) for an Available Tenor of three months’ duration, 0.42826% (42.826 basis points) for an Available Tenor of six months’ duration, and 0.71513% (71.513 basis points) for an Available Tenor of twelve months’ duration, or~~

~~(ii) the sum of: (i) Daily Simple SOFR and (ii) 0.11448% (11.448 basis points);~~

~~provided that, if initially LIBOR is replaced with the rate contained in clause (ii) above (Daily Simple SOFR plus the applicable spread adjustment) and subsequent to such replacement, the Administrative Agent determines that Term SOFR has become available and is administratively feasible for the Administrative Agent in its sole discretion, and the Administrative Agent notifies the Company and each Lender of such availability, then from and after the beginning of the Interest Period, relevant interest payment date or payment period for interest calculated, in each case, commencing no less than thirty (30) days after the date of such notice, the Benchmark Replacement shall be as set forth in clause (i) above; and~~

~~(b) For purposes of Section 3.03(c)(ii), the sum of (i) the alternate benchmark rate and (ii) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by the Administrative Agent and the Company as the replacement Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by a Relevant Governmental Body, for U.S. Dollar-denominated syndicated credit facilities at such time;~~

~~provided that, if the Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than 0.0%, the Benchmark Replacement will be deemed to be 0.0% for the purposes of this Agreement and the other Loan Documents.~~

~~Any Benchmark Replacement shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, such Benchmark Replacement shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.~~

~~“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents);~~

~~“Benchmark Transition Event” means, with respect to any then current Benchmark other than LIBOR, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Benchmark or a Governmental Authority with jurisdiction over such~~

~~administrator announcing or stating that all Available Tenors are or will no longer be representative, or made available, or used for determining the interest rate of loans, or shall or will otherwise cease, provided that, at the time of such statement or publication, there is no successor administrator that is satisfactory to the Administrative Agent, that will continue to provide any representative tenors of such Benchmark after such specific date.~~

“Beneficial Ownership Certification” means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“Blocked Account Agreement” means a control agreement reasonably satisfactory to the Revolving Administrative Agent executed by an institution maintaining a deposit account or securities account for a Loan Party (as defined in the Syndicated Credit Agreement), to perfect the Revolving Administrative Agent’s Lien on such account.

“Borrower” and “Borrowers” each has the meaning specified in the introductory paragraph hereto.

“Borrower Materials” has the meaning specified in Section 6.02.

“Borrowers’ Liabilities” has the meaning specified in Section 2.13(c).

“Borrowing” means a borrowing consisting of simultaneous Term Loans of the same Type made by each of the Lenders pursuant to Section 2.01.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located ~~and, if such day relates to any Eurodollar Rate Loan, means any such day that is also a London Banking Day.~~

“Captive Insurance Company” means any captive insurance company that is either (A) formed by the Company or any of its Subsidiaries or (B) acquired by the Company or any of its Subsidiaries or Affiliates in connection with any Permitted Acquisition, in each case so long as the primary purpose of such entity is providing self-insurance benefits to a Borrower or its Subsidiaries and Affiliates.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith or in the implementation thereof and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted, issued or implemented.

“Change of Control” means (a) the direct or indirect sale, transfer, conveyance or other disposition, in one or a series of related transactions, of the voting stock in the Company, the result of which is that a Person other than a Permitted Holder becomes the beneficial owner, directly or indirectly

of more than 35% of the voting stock of the Company, measured by voting power rather than number of shares, (b) a Change of Control as defined in the Indentures or (c) a change of control under any indenture or any similar instrument evidencing any refinancing, refunding, renewal or extension of any Subordinated Indebtedness. As used herein, "Permitted Holder" means those direct and indirect beneficial owners of the voting stock of the Company as of the Effective Date. As used herein, voting stock of any Person as of any date means the capital stock of such Person that at such date is entitled to vote in the election of the Board of Directors of such Person.

"Closing Date" means the first date all the conditions precedent in Sections 4.02 and 4.03(a) and (b) (to the extent required to be satisfied on or prior to the Closing Date) are satisfied or waived in accordance with Section 10.01.

"Closing Date Financed Properties" means those certain Financed Properties described on Schedule 1.01(C) as of the Closing Date.

"Closing Date Real Estate Support Documents" means, for each Closing Date Financed Property, (a) an ALTA lender's title insurance policy, or a commitment to issue such title insurance policy, in an amount reasonably acceptable to the Administrative Agent (provided that the amount of such policy is not less than 100% of the portion of the original Term Loan made with respect to such Closing Date Financed Property), insuring the Administrative Agent's interest in the Closing Date Financed Property, subject only to exceptions for Mortgage Permitted Liens and together with such customary endorsements as the Administrative Agent may reasonably require, from a nationally recognized title insurance company reasonably acceptable to the Administrative Agent, an ALTA land survey of such Financed Property, for which all necessary fees (if applicable) have been paid, reasonably acceptable to the Administrative Agent, and (b) subordination and attornment agreements in substantially the form attached hereto as Exhibit H for the Closing Date Financed Properties located at 6113 and 6107 Lemmon, Dallas, Texas.

"Code" means the Internal Revenue Code of 1986.

"Collateral" means, collectively, the interests in real property, fixtures, related real property interests, related contracts and proceeds of the foregoing in which a Lien is granted or purported to be granted pursuant to the Mortgages.

"Collateral Removal" means the removal of all or a portion of a Financed Property from the Property Pool (and the release of any Liens of the Administrative Agent (on behalf of the Lenders) on such Financed Property and any Collateral related to such Financed Property, as applicable); provided that, (i) there shall exist no Default or Event of Default at the time of any such Collateral Removal, (ii) the Administrative Agent shall have received FIRREA Appraisals of all Financed Properties which will remain in the Property Pool after the removal of the applicable Financed Property, each dated no more than twelve (12) months before such Collateral Removal which evidence that, after giving effect to the removal of the applicable Financed Property, the outstanding principal amount of all Loans shall not exceed 75% of the aggregate Adjusted FIRREA Appraisal Value for all Remaining Properties in the Property Pool, and (iii) the Company shall have paid the Administrative Agent a \$7,500.00 collateral removal fee. For the avoidance of doubt, the Permitted Financed Property Disposition of all or a portion of a Financed Property in which the respective Borrower makes the repayment required by clause (iii) of the definition of "Permitted Financed Property Disposition" shall not constitute a "Collateral Removal".

"Collateral Substitution" means the removal of all or a portion of a Financed Property (such Financed Property or portion thereof, a "Removed Property") from the Property Pool (and the release of any Liens of the Administrative Agent (on behalf of the Lenders) on such Removed Property and any Collateral related to such Removed Property, as applicable) substantially simultaneously with, and in any event on the same day as, the addition of a different Financed Property (the "Added Property") to the Property Pool; provided that, (i) there shall exist no Default or Event of Default at the time of any such Collateral Substitution, (ii) any such Collateral Substitution shall be subject to satisfaction of those requirements set forth in Section 4.03 and such Added Property (and any Collateral related to such property) shall be subject to a Mortgage and Real Estate Support Documents, (iii) in the event any Subsidiary which owns the real property proposed to be Added Property in connection with such Collateral Substitution is not an existing Borrower or Subsidiary Guarantor, as the case may be, such

Subsidiary shall have complied with the provisions of Section 6.14 prior to or substantially simultaneously with the addition of such proposed Added Property to the Property Pool, (iv) the Company shall have paid all fees related to any such Collateral Substitution, and (v) in the event of a Collateral Substitution for a portion of a Financed Property, such substitution shall be effected in connection with a Permitted Financed Property Disposition.

“Collateral Substitution Test” shall mean:

(i) with respect to a Collateral Substitution of an entire Financed Property, that the Administrative Agent shall have received a FIRREA Appraisal of the Added Property dated no more than six (6) months before such Collateral Substitution which evidences an Adjusted FIRREA Appraisal Value of the Added Property equal to at least the Initial FIRREA Appraisal Value of the Removed Property; and

(ii) with respect to a Collateral Substitution of a portion of a Financed Property (such Financed Property (including the respective Removed Property and the respective Remaining Property) being referred to as, the “Subject Financed Property”), that:

(x) the Administrative Agent shall have received FIRREA Appraisals dated no more than six (6) months before such Collateral Substitution of (1) the portion of the Financed Property that will remain as Collateral after Collateral Substitution (the “Remaining Property”) and (2) any Added Property proposed to be added to the Property Pool in connection with such Collateral Substitution; and

(y) (1) the Adjusted FIRREA Appraisal Value of the Remaining Property, plus the Adjusted FIRREA Appraisal Value of any such Added Property shall be equal to at least the Initial FIRREA Appraisal Value of the Initial Financed Properties or (2) in the event the proportionate amount of the Initial FIRREA Appraisal Value associated with such Removed Property is readily identifiable by the applicable initial FIRREA Appraisal for such Subject Financed Property (as determined by the Administrative Agent), the Adjusted FIRREA Appraisal Value of any such Added Property shall be equal to at least such readily identifiable proportionate amount of such Initial FIRREA Appraisal Value (and in which case of this clause (2), the FIRREA Appraisal referenced in clause (x)(1) above shall not be required to be delivered to Lender).

“Commitment” means, as to each Lender, its obligation to make its portion of the Term Loan to the Borrowers pursuant to Section 2.01.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Communication” means this Agreement, any Loan Document and any document, any amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to any Loan Document.

“Company” has the meaning specified in the introductory paragraph hereto.

“Company Account” means that certain account of the Company that is maintained with Bank of America with an account number ending in 3354, as such account may be replaced from time to time by written agreement of the Company and the Administrative Agent.

“Company Guaranty” means that certain Company Guaranty Agreement executed by the Company dated as of the Closing Date in favor of the Administrative Agent and the Lenders, substantially in the form of Exhibit D, as supplemented, amended, or modified from time to time.

“Competitor” has the meaning set forth in Section 10.06(b)(v).

“Compliance Certificate” means a certificate substantially in the form of Exhibit F.



“Conforming Changes” means, with respect to the use, administration of or any conventions associated with SOFR or any proposed Successor Rate or Daily Simple SOFR, as applicable, any conforming changes to the definitions of “Base Rate”, “SOFR”, and “Daily Simple SOFR”, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definition of “Business Day”, timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of the Administrative Agent, to reflect the adoption and implementation of such applicable rate(s) and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate exists, in such other manner of administration as the Administrative Agent determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consolidated Adjusted Funded Indebtedness” means, as of any date of determination, for the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary) on a consolidated basis, (a) Consolidated Funded Indebtedness minus (b) Permitted Floorplan Indebtedness.

“Consolidated EBITDA” means, for any period, for the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary), Consolidated EBITDAR for such period minus Consolidated Rental Expense for such period.

“Consolidated EBITDAR” means, for any period, for the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary), on a consolidated basis, an amount equal to Consolidated Net Income for such period plus (a) the following, without duplication, to the extent deducted in calculating such Consolidated Net Income: (i) Consolidated Interest Expense for such period (other than interest expense with respect to Permitted Floorplan Indebtedness), (ii) the provision for Federal, state, local and foreign income Taxes payable by the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries) on a consolidated basis for such period, (iii) depreciation and amortization expense, (iv) other non-cash expenses reducing such Consolidated Net Income which do not represent a cash item in such period or any future period, (v) all losses on and other expenses related to repurchases of long-term Indebtedness, (vi) any expenses or charges related to any issuance of Equity Interests, Investment, Acquisition, disposition, recapitalization or the incurrence or repayment of Indebtedness (including any refinancing thereof) and any amendment or modification to the terms of any such transactions (in each case, whether or not successful), (vii) any fees, expenses or other costs paid in connection with the Syndicated Credit Agreement, (viii) other non-recurring or unusual losses, and (ix) Consolidated Rental Expense; minus (b) to the extent included in calculating such Consolidated Net Income, (i) all non-cash items increasing Consolidated Net Income for such period, (ii) all gains on repurchases of long-term Indebtedness, (iii) other non-recurring or unusual gains; provided, that the sum of clauses (a)(vi), (a)(vii) and (a)(viii) shall not exceed fifteen percent (15%) of Consolidated EBITDAR for the applicable four-quarter period (calculated after giving effect to any such add-backs).

“Consolidated Fixed Charge Coverage Ratio” means, as of any date of determination, the ratio of (a) the total of (i) Consolidated EBITDAR for the four fiscal quarter period most recently ending on or prior to such date for which internal financial statements are available, less (ii) deemed capital expenditures in an amount equal to \$100,000 for each dealer location in existence on such date, to (b) Consolidated Fixed Charges for such period.

“Consolidated Fixed Charges” means, for any period, the sum of (a) Consolidated Interest Expense for such period (but excluding interest expense with respect to Permitted Floorplan Indebtedness), plus (b) scheduled amortization during such period of the principal portion of all indebtedness for money borrowed (other than any balloon, bullet or similar principal payment which repays or refinances such indebtedness in full) of the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary) on a consolidated basis, plus (c)

Consolidated Rental Expense for such period, less (d) Consolidated Pro Forma Rent Savings for such period, plus (e) Taxes paid in cash during such period by the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary) (excluding, any such cash Taxes paid as a result of any gains on repurchases of long-term Indebtedness), less (f) cash refunds of Federal, state, local and foreign income Taxes received by the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary) on a consolidated basis during such period.

“Consolidated Funded Indebtedness” means, as of any date of determination, for the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary) on a consolidated basis, the sum of (a) the outstanding principal amount of all Indebtedness, whether current or long-term, for borrowed money (including Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all purchase money Indebtedness (other than trade accounts payable incurred in the ordinary course of business), (c) all direct reimbursement obligations arising under funded or drawn letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments, (d) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business), (e) Attributable Indebtedness in respect of capital leases and Synthetic Lease Obligations, (f) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (e) above of Persons other than the Company or any Subsidiary (but including Guarantees of Indebtedness of any Specified Insurance Subsidiary), and (g) all Indebtedness of the types referred to in clauses (a) through (f) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which the Company or a Subsidiary (other than a Specified Insurance Subsidiary) is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to the Company or such Subsidiary (or is expressly made with limited recourse to the Company or such Subsidiary, in which case the amount of such Indebtedness (for the purpose of determining Consolidated Funded Indebtedness) is limited to the extent of such recourse).

“Consolidated Interest Expense” means, for any period, for the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary) on a consolidated basis, the sum of (a) all cash interest, premium payments, debt discount, fees, charges and related expenses of the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary) in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, and (b) the portion of rent expense of the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary) with respect to such period under capital leases that is treated as interest in accordance with GAAP.

“Consolidated Net Income” means, for any period, for the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary) on a consolidated basis, the net income of the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries) (excluding extraordinary gains and extraordinary losses) for that period.

“Consolidated Pro Forma Rent Savings” means the pro forma rent savings associated with any leased properties purchased within the prior twelve-month period for the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary) on a consolidated basis as determined by the Company in good faith.

“Consolidated Rental Expense” means, for any period, for the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary) on a consolidated basis, the aggregate amount of fixed and contingent rentals payable by the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary) with respect to leases of real and personal property (excluding capital lease obligations) determined in accordance with GAAP for such period.

“Consolidated Secured Funded Indebtedness” means, as of any date of determination, for the Company and its Subsidiaries (other than the Specified Insurance Subsidiaries and any Designated

Escrow Subsidiary) on a consolidated basis, the outstanding principal amount of all Consolidated Funded Indebtedness that is secured by a Lien.

“Consolidated Secured Leverage Ratio” means, as of any date of determination, the ratio of: (a) Consolidated Secured Funded Indebtedness as of the date of determination to (b) Consolidated EBITDA during the Applicable Four-Quarter Period.

“Consolidated Total Lease Adjusted Leverage Ratio” means, as of any date of determination, the ratio of: (a) the sum of (i) Consolidated Adjusted Funded Indebtedness as of the date of determination, minus (ii) the sum of (x) the aggregate amount as of the date of determination of cash on the consolidated balance sheet of the applicable Person and its Restricted Subsidiaries as of such date (to the extent the use thereof for application to payment of Indebtedness is not prohibited by law or any contract to which any such Person is a party) which cash is held in deposit accounts subject to Blocked Account Agreements or in deposit accounts maintained with Bank of America, which ensure, in either case, that the Revolving Administrative Agent has a first priority, perfected Lien in such accounts and (y) the Floorplan Offset Amount (if any) as of such date; plus (iii) six (6) times Consolidated Rental Expense during the Applicable Four-Quarter Period (excluding Consolidated Rental Expense relating to any real property acquired during such period to the extent any lease on such property is terminated prior to or simultaneously with such acquisition, but including as Consolidated Rental Expense the “rental payments” for any real property disposed of and leased back to the Company or its Subsidiaries during such period as if such sale-leaseback transaction had occurred on and such “rental payments” began on the first day of such applicable four fiscal quarter period) to (b) Consolidated EBITDAR for the Applicable Four-Quarter Period.

“Consolidated Total Leverage Ratio” means, as of any date of determination, the ratio of: (a) Consolidated Adjusted Funded Indebtedness as of the date of determination minus the sum of (x) the aggregate amount as of the date of determination of cash on the consolidated balance sheet of the applicable Person and its Restricted Subsidiaries as of such date (to the extent the use thereof for application to payment of Indebtedness is not prohibited by law or any contract to which any such Person is a party) which is held in deposit accounts subject to Blocked Account Agreements or in deposit accounts maintained with Bank of America, which ensure, in either case, that the Revolving Administrative Agent has a first priority, perfected Lien in such accounts and (y) the Floorplan Offset Amount (if any) as of such date to (b) Consolidated EBITDA for the Applicable Four-Quarter Period.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Cost of Acquisition” means, with respect to any Acquisition, as at the date of the consummation of such Acquisition, the sum of the following (without duplication): (i) the value of the Equity Interests of any Subsidiary to be transferred in connection with such Acquisition, (ii) the amount of any cash and fair market value of other property (excluding property of the type described in clause (i) and the unpaid principal amount of any debt instrument) given as consideration in connection with such Acquisition as reasonably determined by the Company in good faith, (iii) the amount (determined by using the face amount or the amount payable at maturity, whichever is greater) of any Indebtedness assumed by the Company or any Subsidiary in connection with such Acquisition, (iv) all additional purchase price amounts in the form of earnouts and other contingent obligations that should be recorded on the financial statements of the Company and its Subsidiaries in accordance with GAAP in connection with such Acquisition, (v) all amounts paid in respect of covenants not to compete, consulting agreements that should be recorded on the financial statements of the Company and its Subsidiaries in accordance with GAAP, and other affiliated contracts in connection with such Acquisition, and (vi) the aggregate fair market value of all other consideration (other than Equity Interests of the Company) given by the Company or any Subsidiary in connection with such Acquisition as reasonably determined by the Company in good faith; provided that the Cost of Acquisition shall not include the purchase price of

flooded vehicles acquired in connection with such Acquisition. For purposes of determining the Cost of Acquisition for any transaction, the Equity Interests of the Company or any Subsidiary shall be valued in accordance with GAAP.

“Covered Entity” has the meaning specified in [Section 10.22\(b\)](#).

“Credit Extension” means a Borrowing.

“Daily Simple SOFR” means:

(a) with respect to ~~any applicable~~ a Daily Simple SOFR Loan, the rate per annum equal to the Daily Simple SOFR Published Rate two Business Days prior to the date of determination ~~date means the secured overnight financing; provided that if the rate (“SOFR”) is~~ not published on such date by the Federal Reserve Bank of New York, as the administrator of the benchmark (or a successor administrator) of determination then Daily Simple SOFR means the Daily Simple SOFR Published Rate on the first Business Day immediately prior thereto, in each case, plus the SOFR Adjustment; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to Daily Simple SOFR Published Rate on such date;

(c) provided that if Daily Simple SOFR determined in accordance with either of the foregoing provisions (a) or (b) of this definition would otherwise be less than zero, Daily Simple SOFR shall be deemed zero for purposes of this Agreement.

“Daily Simple SOFR Loan” means a Term Loan that bears interest at a rate based on Daily Simple SOFR.

“Daily Simple SOFR Published Rate” with respect to any applicable determination date means the SOFR published on such date on the Federal Reserve Bank of New York’s website (or any successor source).

“Daily Simple SOFR Replacement Date” has the meaning specified in [Section 3.03\(b\)](#).

“Debtor Relief Laws” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means an interest rate equal to (a) the Base Rate plus (b) the Applicable Rate, if any, applicable to Base Rate Loans plus (c) 2% per annum; provided, however, that with respect to a ~~Eurodollar Rate~~ Daily Simple SOFR Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Term Loan plus 2% per annum.

“Defaulting Lender” means, subject to [Section 2.12\(b\)](#), any Lender that, (a) has failed to (i) fund all or any portion of its Term Loans within two Business Days of the date such Term Loans were required to be funded hereunder, unless such Lender notifies the Administrative Agent and the Company in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, (b) has notified the Company or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Term Loan hereunder and states that such position

is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Company, to confirm in writing to the Administrative Agent and the Company that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Company) or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.12(b)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Company and each Lender promptly following such determination.

"Designated Escrow Subsidiary" means a wholly-owned Subsidiary that is formed by the Company or any of its Subsidiaries for the sole purpose of incurring Indebtedness the proceeds of which will be subject to an escrow or other similar arrangement; provided that upon the termination of all such escrow or similar arrangements (but in any event no later than the consummation of the applicable Acquisition), such Subsidiary shall cease to constitute a "Designated Escrow Subsidiary" hereunder and shall merge with and into the Company or one of its Restricted Subsidiaries. Prior to its merger with and into such Person, the Designated Escrow Subsidiary shall not own, hold or otherwise have any interest in any material assets other than the proceeds of the applicable Indebtedness incurred by the Designated Escrow Subsidiary and any cash or cash equivalents invested in such Designated Escrow Subsidiary to cover interest and premium in respect of such Indebtedness.

"Designated Jurisdiction" means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

"Disposition" or "Dispose" means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith and including any disposition of property pursuant to a Division.

"Disposition Proceeds" means, with respect to any Disposition, as at the date of such Disposition, the sum of the following (without duplication): (i) the amount of any cash and fair market value of other property received as consideration in connection with such Disposition, (ii) all consideration amounts in the form of earnouts and other contingent obligations that should be recorded on the financial statements of the Company and its Subsidiaries in accordance with GAAP in connection with such Disposition, (iii) all amounts received in respect of covenants not to compete, consulting agreements that should be recorded on the financial statements of the Company and its Subsidiaries in accordance with GAAP, and other affiliated contracts in connection with such Disposition, and (iv) the aggregate fair market value of all other consideration received by the Company or any Subsidiary in connection with such Disposition; provided that the Disposition Proceeds shall not include (a) the sale price of floored Vehicles disposed of in connection with such Disposition or (b) any amount used to pay off Liens (other than Liens created by the Loan Documents) on any property disposed of in connection with such Disposition.

"Dividing Person" has the meaning assigned to it in the definition of "Division."

“Division” means the division of the assets, liabilities and/or obligations of a Person (the “Dividing Person”) among two or more Persons (whether pursuant to a “plan of division” or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

“Division Successor” means any Person that, upon the consummation of a Division of a Dividing Person, holds all or any portion of the assets, liabilities and/or obligations previously held by such Dividing Person immediately prior to the consummation of such Division. A Dividing Person which retains any of its assets, liabilities and/or obligations after a Division shall be deemed a Division Successor upon the occurrence of such Division.

“Dollar” and “\$” mean lawful money of the United States.

“Domestic Subsidiary” means any Subsidiary that is not a Foreign Subsidiary.

~~“Early Opt in Effective Date” means, with respect to any Early Opt in Election, the sixth (6th) Business Day after the date notice of such Early Opt in Election is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt in Election is provided to the Lenders, written notice of objection to such Early Opt in Election from Lenders comprising the Required Lenders.~~

~~“Early Opt in Election” means the occurrence of:~~

~~(a) a determination by the Administrative Agent, or a notification by the Company to the Administrative Agent that the Borrowers have made a determination, that U.S. Dollar-denominated syndicated credit facilities currently being executed, or that include language similar to that contained in Section 3.03(c), are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR, and~~

~~(b) the joint election by the Administrative Agent and the Company to replace LIBOR with a Benchmark Replacement and the provision by the Administrative Agent of written notice of such election to the Lenders.~~

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a Subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Effective Date” means May 10, 2021.

“Electronic Record” and “Electronic Signature” shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 10.06(b)(iii), and (v) (subject to such consents, if any, as may be required under Section 10.06(b)(iii)).

“Environmental Issue” means, with respect to a Financed Property, any potential or existing Environmental Liability relating to such Financed Property that is identified in any environmental reports obtained by any Borrower as requiring further remediation or investigation, including, without limitation, any potential Environmental Liability of which any Borrower or any Borrower’s environmental consultant becomes aware other than items that are *de minimis* in nature (as determined by the Administrative Agent in its sole discretion).

“Environmental Laws” means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Company, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equipment” has the meaning given such term in Section 9-102 of the UCC.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with the Company within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Company or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Company or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Company or any ERISA Affiliate.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Eurodollar Rate” means:

~~(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the London Interbank Offered Rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate) for U.S. Dollars for a period equal in length to such Interest Period (“LIBOR”) as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period;~~

~~(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to LIBOR, at or about 11:00 a.m., London time determined two Business Days prior to such date for U.S. Dollar deposits with a term of one month commencing that day; and~~

~~(c) if the Eurodollar Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.~~

~~A Term Loan bearing interest at the Eurodollar Rate may be (a) borrowed on any day (whether or not it is the first day of the applicable Interest Period) and (b) repaid or converted to a different Type of Term Loan on any day (whether or not it is the last day of an Interest Period) without giving rise to any additional payment for “break funding” losses.~~

“Eurodollar Rate Loan” means a Term Loan that bears interest at a rate based on clause (a) of the definition of “Eurodollar Rate.”

“Event of Default” has the meaning specified in Section 8.01.

“Excluded Swap Obligation” means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Loan Party of, the joint and several liability of such Loan Party for, or the grant by such Loan Party of a security interest to secure, such Swap Obligation (or any Guarantee thereof or joint and several liability therefor) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to Section 10.20 and any other “keepwell, support or other agreement” for the benefit of such Loan Party and any and all guarantees of such Loan Party’s Swap Obligations by other Loan Parties) at the time the Guarantee of such Loan Party, the joint and several liability of such Loan Party or a grant by such Loan Party of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes excluded in accordance with the first sentence of this definition. The parties hereto agree that if any Loan Party has granted a Lien on any Collateral of such Loan Party pursuant to any Collateral Document, the obligations secured by such Lien shall exclude any Excluded Swap Obligation with respect to such Loan Party, and such Collateral Document is hereby deemed amended to effect such exclusion.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Term Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Term Loan or Commitment (other than pursuant to an assignment request by the Company under Section 10.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii) or (iii) or (c), amounts with respect to



such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.01(e) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities entered into in connection with the implementation of the foregoing.

“Federal Funds Rate” means, for any day, the rate per annum ~~calculated by~~ equal to the weighted average of the rates on overnight Federal Reserve Bank of New York based on such day's federal funds transactions by depository institutions (as determined in such manner as with members of the Federal Reserve Bank of New York shall set forth on its public website from time to time) and System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, (b) if no such rate is so published on such next succeeding Business Day by, the Federal Reserve Bank of New York Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the federal funds effective rate; provided that Administrative Agent, and (c) if the Federal Funds Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Financed Property” means a real property parcel (and improvements related thereto) which (a) is owned in fee by a Borrower and located at or near a dealership or otherwise used (or under development for use) for any activity described in Section 6.20, (b) is located in any state of the United States of America or the District of Columbia, and (c) is one of the properties identified on Schedule 1.01(C). The Administrative Agent may revise Schedule 1.01(C) from time to time to reflect any real property parcel that has been added to the Property Pool, or any real property parcel that has been removed from the Property Pool, from time to time.

“FIRREA Appraisal” means an appraisal of a Financed Property that is commissioned by the Administrative Agent and satisfies the requirement of the Federal Institutions Reform, Recovery and Enforcement Act or is otherwise acceptable to the Administrative Agent in its sole discretion.

“Flood Hazard Property” means any real property which is determined to be in an area designated by the Federal Emergency Management Agency (or any successor agency) as having special flood or mudslide hazards.

“Flood Requirements” means the following, with respect to any Flood Hazard Property, in each case in form and substance satisfactory to the Administrative Agent and each Lender (such Lender approval not to be unreasonably withheld, conditioned or delayed): (a) the applicable Loan Party's written acknowledgment of receipt of written notification from the Administrative Agent (i) as to the fact that such real property is a Flood Hazard Property, (ii) as to whether the community in which each such Flood Hazard Property is located is participating in the National Flood Insurance Program (or any successor program) and (iii) such other flood hazard determination forms, notices and confirmations thereof as requested by the Administrative Agent and naming the Administrative Agent as lender's loss payee; (b) copies of flood insurance policies or certificates of insurance of the applicable Loan Parties in compliance with applicable laws and regulations and naming the Administrative Agent as lender's loss payee; and (c) property level information sufficient for the Administrative Agent and each Lender to determine the adequacy of flood insurance.

“Foreign Lender” means any Lender that is organized under the Laws of a jurisdiction other than that in which the Company is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Foreign Subsidiary” means (i) any Subsidiary not organized under the laws of the United States, any state thereof, or the District of Columbia, (ii) any Subsidiary of an entity described in the preceding clause (i), (iii) any Subsidiary that is a disregarded entity for U.S. federal income tax purposes that owns the capital stock or indebtedness of one or more Foreign Subsidiaries or (iv) a Subsidiary substantially all of the assets of which are capital stock or indebtedness of one or more Foreign Subsidiaries.

“Framework Agreement” means a framework agreement, in each case between the Company or any Subsidiary and a manufacturer or distributor of Vehicles.

“Franchise Agreement” means any dealer franchise agreement, dealer sales and service agreement or similar agreement.

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“Fund” means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness (the “primary obligations”) payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such primary obligations, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such primary obligations of the payment or performance of such primary obligations, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such primary obligations, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such primary obligations of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any primary obligations of any primary obligor, whether or not such primary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such primary obligation to obtain any such Lien). The amount of any Guarantee (other than a Guarantee of the type described in clause (b) above) shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as reasonably determined by the guaranteeing Person in good faith. The amount of any Guarantee of the type described in clause (b) above shall be deemed to be an amount equal to the lesser of (x) the fair market value of the property subject to such Lien and (y) the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb

has a corresponding meaning. The term “Guarantee” shall not include endorsements of instruments for deposit or collection in the ordinary course of business.

“Guaranties” means, collectively, the Company Guaranty and the Subsidiary Guaranty.

“Guarantors” means, collectively, (a) the Company, (b) the Subsidiary Guarantors, and (c) with respect to (i) Obligations owing by any Loan Party or any Subsidiary of a Loan Party under any Swap Contract and (ii) the payment and performance by each Specified Loan Party of its obligations under its Guarantee with respect to all Swap Obligations, each Borrower.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“Hedge Bank” means any Person that, (a) at the time it enters into a Swap Contract not prohibited under Article VI or VII, is a Lender or an Affiliate of a Lender, or (b) at the time it (or its Affiliate) becomes a Lender, is a party to a Swap Contract not prohibited under Article VI or VII, in each case, in its capacity as a party to such Swap Contract.

“Immaterial Subsidiary” means each direct or indirect Subsidiary of the Company that either (a) has total assets (including Equity Interests in other Persons) of less than 2.5% of the total assets of the Company and its Subsidiaries (calculated as of the most recent fiscal period with respect to which the Administrative Agent shall have received financial statements required to be delivered pursuant to Sections 6.01(a) or (b) (or if prior to delivery of any financial statements pursuant to such Sections, then calculated based on the Audited Financial Statements) or (b) contributes less than 2.5% to Consolidated EBITDA (calculated as of the most recent fiscal period with respect to which the Administrative Agent shall have received financial statements required to be delivered pursuant to Sections 6.01(a) or (b) (or if prior to delivery of any financial statements pursuant to such Sections, then calculated based on the Audited Financial Statements). In the event that either (x) the total assets of all Immaterial Subsidiaries equals or exceed 5% of the total assets of the Company and its Subsidiaries (calculated as of the most recent fiscal period with respect to which the Administrative Agent shall have received financial statements required to be delivered pursuant to Sections 6.01(a) or (b) (or if prior to delivery of any financial statements pursuant to such Sections, then calculated based on the Audited Financial Statements) or (y) the total contribution of all Immaterial Subsidiaries to Consolidated EBITDA exceeds 5% of Consolidated EBITDA (calculated as of the most recent fiscal period with respect to which the Administrative Agent shall have received financial statements required to be delivered pursuant to Sections 6.01(a) or (b) (or if prior to delivery of any financial statements pursuant to such Sections, then calculated based on the Audited Financial Statements), as the case may be, the Company will designate Subsidiaries which would otherwise constitute Immaterial Subsidiaries to be excluded from qualifying as Immaterial Subsidiaries until the total assets and total contribution to Consolidated EBITDA of all Subsidiaries constituting Immaterial Subsidiaries are, in each case, less than or equal to such 5% thresholds.

“Impacted Loans” has the meaning specified in Section 3.03(a).

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;
- (c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and, in each case, not past due for more than (i) 90 days after the original specified due date thereof, or (ii) if such trade account payable has no specified due date, 120 days after the date on which such trade account payable was created);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) capital leases and Synthetic Lease Obligations;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any capital lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date. The amount of Indebtedness of the type described in clause (e) above to the extent the recourse for such Indebtedness is limited to recourse against the property subject to the Lien described in clause (e) shall be deemed to be an amount equal to the lesser of (x) the fair market value of the property subject to such Lien and (y) the outstanding amount if indebtedness secured by such Lien. The term "Indebtedness" shall not include (x) customer deposits and interest payable thereon in the ordinary course of business or (y) indebtedness to the extent that it has been defeased or satisfied and discharged in accordance with the terms of the documents governing such indebtedness; provided that (i) to the extent the deposit of assets with the applicable holders (or trustee on behalf of such holders) is required in connection with the defeasance or satisfaction and discharge of such indebtedness, such assets are limited to cash and cash equivalents and (ii) none of the assets associated with such defeasance, or any income earned on such assets, shall be included in the calculation of any financial covenant or ratio or incurrence test hereunder, any borrowing base hereunder or the Prepayment Test Amount.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

"Indemnitees" has the meaning specified in Section 10.04(b).

"Indentures" means, collectively, (i) that certain Indenture, dated as of February 19, 2020 (as amended, supplemented and otherwise modified prior to the date hereof, and as further amended, supplemented or otherwise modified from time to time to the extent permitted hereunder), governing the 4.75% Senior Notes due 2030 of the Company, (ii) that certain Indenture, dated as of February 19, 2020 (as amended, supplemented and otherwise modified prior to the date hereof, and as further amended, supplemented or otherwise modified from time to time to the extent permitted hereunder), governing the 4.50% Senior Notes due 2028 of the Company, (iii) that certain Indenture, dated as of November 19, 2021 (as amended, supplemented and otherwise modified prior to the date hereof, and as further amended, supplemented or otherwise modified from time to time to the extent permitted hereunder), governing the 4.625% Senior Notes due 2029 of the Company, and (iv) that certain Indenture, dated as of November 19, 2021 (as amended, supplemented and otherwise modified prior to the date hereof, and as further amended, supplemented or otherwise modified from time to time to the extent permitted hereunder), governing the 5.00% Senior Notes due 2032 of the Company.

“Information” has the meaning specified in Section 10.07.

“Initial Financed Property” means each Financed Property as it existed at the time it was financed by a Term Loan on the Closing Date.

“Initial FIRREA Appraisal Value” means, with respect to any Initial Financed Property, the Adjusted FIRREA Appraisal Value applicable to such Initial Financed Property on the Closing Date.

“Insurance and Condemnation Event” means the receipt by any Loan Party or any of its Subsidiaries of any cash insurance proceeds or condemnation award payable by reason of theft, loss, physical destruction or damage, taking, expropriation or similar event with respect to all or any portion of any Financed Property.

“Interest Payment Date” means the Automatic Debit Date.

~~“Interest Period” means a period of approximately one month commencing on the first Business Day of each month and ending on the first Business Day of the following month.~~

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of capital stock or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested less any principal repayments or return of capital actually received in cash from such Investment.

“IRS” means the United States Internal Revenue Service.

“Joinder Agreement” means each Joinder Agreement, substantially in the form of Exhibit G, executed and delivered by a Subsidiary or any other Person to the Administrative Agent, for the benefit of the Secured Parties, pursuant to Section 6.14.

“Landlord Waiver” means, as to any leasehold interest of a Loan Party, a landlord estoppel and agreement executed by the landlord of such leasehold interest, in each case in form and substance reasonably satisfactory to the Administrative Agent.

“Laws” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“Lease” means each operating lease or capital lease of all or any portion of a Financed Property, including but not limited to those leases set forth on Schedule 5.28 (it being understood that such Schedule may be updated by the Company after the Effective Date and on or prior to the Closing Date, subject to the Administrative Agent’s approval, such approval not to be unreasonably withheld or delayed).

“Lender” has the meaning specified in the introductory paragraph hereto.

“Lender Party” and “Lender Recipient Party” means collectively, the Lenders.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Company and the Administrative Agent, which office may include any Affiliate of such

Lender or any domestic or foreign branch of such Lender or such Affiliate. Unless the context otherwise requires each reference to a Lender shall include its applicable Lending Office.

~~“LIBOR” has the meaning specified in the definition of “Eurodollar Rate”.~~

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“Loan Documents” means this Agreement, including schedules and exhibits hereto, each Note, each Mortgage, each other Security Instrument, the Guaranties, and any amendments, modifications or supplements hereto or to any other Loan Document or waivers hereof or to any other Loan Document.

“Loan Notice” a request by Borrowers for a Borrowing, or conversion of Term Loans from one Type to the other, pursuant to Section 2.02(a), which shall be substantially in the form of Exhibit A or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Company, as agent for the Borrowers.

“Loan Parties” means, collectively, the Company, each Borrower, each Guarantor, and each Person (other than the Administrative Agent, any Lender or any landlord executing a Landlord Waiver) executing a Security Instrument.

~~“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.~~

“Manufacturer” means the manufacturer of, or a manufacturer-appointed wholesale distributor of, inventory.

“Material Acquisition” means any Acquisition by the Company or any Subsidiary that (a) has a Cost of Acquisition greater than \$100,000,000, or (b) the Company has determined (in its sole discretion) to constitute a Material Acquisition.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent), or financial condition of the Company and its Subsidiaries taken as a whole; (b) a material impairment of the rights and remedies of the Administrative Agent or any Lender under any Loan Document, or of ability of the Loan Parties taken as a whole to perform their respective obligations under the respective Loan Documents to which any of them is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against the Loan Parties taken as a whole of the Loan Documents.

“Material Disposition” means any Disposition by the Company or any Subsidiary that (a) has Disposition Proceeds greater than \$75,000,000, (b) results in a decrease in the aggregate of the Revolving Borrowing Base or the Used Vehicle Floorplan Borrowing Base by more than ten percent (10%) or (c) the Company has determined (in its sole discretion) to constitute a Material Disposition.

“Material Lease” means each Lease other than any such Lease (a) with a tenant which is not a Loan Party, (b) which covers a de minimis portion of the square footage of the applicable Financed Property, and (c) which does not interfere with the Administrative Agent’s rights to access or to undertake foreclosure or other rights or remedies with respect to the applicable Financed Property.

“Maturity Date” means the tenth anniversary of the Closing Date (it being understood that upon the occurrence of the Closing Date, the Administrative Agent shall notify the Company and each Lender of the Maturity Date).

“Memorandum of Lease” means each memorandum of lease of all or any portion of a Financed Property.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Mortgage Permitted Liens” means, with respect to any Financed Property, the “Permitted Liens” as defined in the Mortgage for such Financed Property.

“Mortgaged Property” means, with respect to any Financed Property, the “Mortgaged Property” as defined in the Mortgage related to such Financed Property.

“Mortgages” means, collectively, the mortgages, deeds of trust or security deeds now or hereafter securing the Obligations and encumbering any portion of the Collateral in favor of, or for the benefit of, the Administrative Agent, each in form and substance satisfactory to the Administrative Agent and the Company, in each case, as amended, supplemented or otherwise modified from time to time.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Company or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Multiple Employer Plan” means a Plan which has two or more contributing sponsors (including the Company or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“Net Cash Proceeds” means the aggregate cash or cash equivalents proceeds received by any Loan Party or any Subsidiary in respect of any Disposition, any issuance of Equity Interests, Investment, Acquisition, or the incurrence or repayment of Indebtedness, net of (a) direct costs incurred in connection therewith (including, without limitation, legal, accounting and investment banking fees, and sales commissions), (b) taxes paid or payable as a result thereof and (c) in the case of any Disposition, the amount necessary to retire any Indebtedness secured by a Lien permitted hereunder (ranking senior to any Lien of the Administrative Agent) on the related property; it being understood that “Net Cash Proceeds” shall include, without limitation, any cash or cash equivalents received upon the sale or other disposition of any non-cash consideration received by any Loan Party or any Subsidiary in any Disposition, any issuance of Equity Interests, Investment, Acquisition, or the incurrence or repayment of Indebtedness.

“New Vehicle” means a Vehicle which has (x) never been owned except by a manufacturer, distributor or dealer and (y) except in the case of a Vehicle which otherwise qualifies as a Demonstrator, Rental Vehicle or other mileage Vehicle, has never been registered.

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver or amendment that (i) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 10.01 and (ii) has been approved by the Required Lenders.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Note” means a promissory note made by the Borrowers in favor of a Lender evidencing the portion of the Term Loan made by such Lender, substantially in the form of Exhibit B or such other form as may be agreed to by the Administrative Agent and the Company.

“Notice of Loan Prepayment” means a notice of prepayment with respect to a Term Loan, which shall be substantially in the form of Exhibit J or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as

shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer.

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Term Loan or Secured Hedge Agreement, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding; provided, that Obligations of a Loan Party shall exclude any Excluded Swap Obligation with respect to such Loan Party.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Organization Documents” means, (a) with respect to any corporation, the charter or certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating or limited liability company agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Term Loan or Loan Document).

~~“Other Rate Early Opt in” means the Administrative Agent and the Company have elected to replace LIBOR with a Benchmark Replacement other than a SOFR-based rate pursuant to (a) an Early Opt in Election and (b) Section 3.03(c)(ii) and paragraph (b) of the definition of “Benchmark Replacement”.~~

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.05).

“Participant” has the meaning specified in Section 10.06(d).

“Participant Register” has the meaning specified in Section 10.06(d).

“Patriot Act” has the meaning specified in Section 10.18.

“PBGC” means the Pension Benefit Guaranty Corporation, or any successor entity.

“Pension Act” means the Pension Protection Act of 2006.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum funding standards with respect to Pension Plans and set forth in Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.



“Pension Plan” means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by the Company and any ERISA Affiliate or with respect to which the Company or any ERISA Affiliate has any liability and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“Permitted Acquisition” means any Acquisition permitted by [Section 7.19](#).

“Permitted Disposition” means any Disposition permitted by [Section 7.04](#).

“Permitted Financed Property Disposition” means a sale of a Financed Property in whole or in part by a Borrower, provided that (i) such Financed Property is sold at a time when no Default or Event of Default exists, (ii) such sale shall be on fair and reasonable terms substantially as favorable to such Borrower as would be obtainable by such Borrower at the time in an arm’s-length commercial transaction, (iii) substantially simultaneously with such sale, such Borrower shall either (x) repay to the Lenders an amount equal to the lesser of (I) the Applicable Property Disposition Prepayment Amount and (II) the aggregate initial principal amount of all Loans that financed such Financed Property or (y) effectuate a Collateral Substitution or Collateral Removal pursuant to the terms and conditions of this Agreement, (iv) in the event of any such Collateral Substitution, the Collateral Substitution Test shall have been met and (v) in the event of any such Collateral Removal, the requirements set forth in the definition thereof shall have been met.

“Permitted Real Estate Debt” means that certain Indebtedness described on [Schedule 1.01\(P-1\)](#), and any other Indebtedness (other than Swap Contracts) of a Syndicated Loan Party (i) secured solely by real property, fixtures, related real property rights, related contracts and proceeds of the foregoing, owned by such Syndicated Loan Party, and (ii) for which no Person other than the obligor of such Indebtedness, the Company or any Subsidiary which is a Syndicated Loan Party has any liability with respect to such Indebtedness, in each case of clauses (i) and (ii), so long as (x) the aggregate amount of all Permitted Real Estate Debt outstanding at any time shall not exceed eighty-five percent (85%) of the value of the real property securing such Indebtedness, as evidenced by the respective appraisals of the real property ordered in connection with obtaining such Indebtedness, (y) the amount of any Permitted Real Estate Debt relating to a particular parcel of real property shall not exceed one hundred percent (100%) of the value of such parcel securing such Indebtedness, as evidenced by the respective appraisal of such parcel ordered in connection with obtaining such Indebtedness, and (z) upon the request of the Administrative Agent, the Company shall promptly deliver to the Administrative Agent a copy of any appraisal described in clause (x) or (y) above.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Company or any ERISA Affiliate or any such Plan to which the Company or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“Platform” has the meaning specified in [Section 6.02](#).

“Pre-Amendment Credit Agreement” means [this Agreement as in effect immediately prior to the Second Amendment Effective Date](#).

“Principal Amortization Payment Date” means the first Business Day of each January, April, July and October after the Closing Date and the Maturity Date.

“Pro Forma Compliance” means,

(i) with respect to any event that requires Pro Forma Compliance under this Agreement (each, a “Pro Forma Determination Event”) other than as set forth in clause (ii) or (iii) below, that the Company and its Subsidiaries are in pro forma compliance with the financial covenants set forth in [Section 7.11](#) (calculated as if such Pro Forma Determination Event had occurred on the first day of the four fiscal quarter period ending on the last day of the most recent fiscal quarter in respect of which financial statements have been delivered pursuant to [Section 6.01\(a\)](#) or (b)),

(ii) with respect to any Restricted Payment to be made on any date (any such date, an “Applicable Restricted Payment Date”) as contemplated by Section 7.10, that the Company and its Subsidiaries will be in pro forma compliance with the financial covenants set forth in Section 7.11 as of the last day of the most recent fiscal quarter in respect of which financial statements have been delivered pursuant to Section 6.01(a) or (b), such financial covenants being calculated on a pro forma basis as if such Restricted Payment (and any other Restricted Payment made on the Applicable Restricted Payment Date or at any time since the last day of such fiscal quarter) had been made on the last day of such fiscal quarter, and

(iii) with respect to any prepayment of Subordinated Indebtedness to be made on any date (any such date, an “Applicable Prepayment Date”) as contemplated by Section 7.16, that the Company and its Subsidiaries will be in pro forma compliance with the financial covenants set forth in Section 7.11 as of the last day of the fiscal quarter which includes the Applicable Prepayment Date as well as the last day of each of the three fiscal quarters succeeding the fiscal quarter containing the Applicable Prepayment Date, in each case (x) calculated as if such prepayment had occurred on the first day of the fiscal quarter which includes the Applicable Prepayment Date and (y) based on projected financial statements delivered to the Administrative Agent which do not reflect material and adverse changes in growth or turnover assumptions of trading assets or accounts payable as compared to the most recent financial statements delivered pursuant to Sections 6.01(a) or (b). Pro forma calculations made pursuant to this definition that require calculations of Consolidated EBITDAR on a pro forma basis will be made in accordance with Section 1.03(d).

“Pro Forma Compliance Certificate” means, with respect to any event, a duly completed Compliance Certificate demonstrating the pro forma calculations of the items set forth in the Compliance Certificate on a pro forma basis in accordance with the definition of “Pro Forma Compliance.”

“Project Star Acquisition” has the meaning specified in the recitals hereto.

“Project Star Leases” has the meaning specified in the recitals hereto.

“Project Star Sellers” has the meaning specified in the recitals hereto.

“Property Pool” means, collectively, as of any date, the Financed Properties constituting Collateral as of such date.

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“Public Lender” has the meaning specified in Section 6.02.

“Qualified ECP Guarantor” means, at any time, each Loan Party with total assets exceeding \$10,000,000 or that qualifies at such time as an “eligible contract participant” under the Commodity Exchange Act and can cause another Person to qualify as an “eligible contract participant” at such time under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Qualified Service Loaner Program” means any program with any Manufacturer, or the financial affiliate of such Manufacturer, pursuant to which the Company or any Subsidiary finances New Vehicles under such program, which New Vehicles are used by the Company or such Subsidiary as Rental Vehicles.

“Real Estate Support Documents” means, for each Added Property, (a) an ALTA lender’s title insurance policy, or a commitment to issue such title insurance policy, in an amount reasonably acceptable to the Administrative Agent (provided that the amount of such policy is not less than 100% of the portion of the original Term Loan made with respect to such Financed Property), insuring the Administrative Agent’s interest in the Financed Property, subject only to exceptions for Mortgage Permitted Liens and together with such customary endorsements as the Administrative Agent may reasonably require, from a nationally recognized title insurance company reasonably acceptable to the Administrative Agent, an ALTA land survey of such Financed Property, for which all necessary fees (if applicable) have been paid, zoning reports, appraisals (including FIRREA Appraisals), environmental

reports (including Phase I and if requested by the Administrative Agent, Phase II environmental assessments) and other mortgage-related documents, as the Administrative Agent may reasonably request, (b) subordination and attornment agreement in substantially the form attached hereto as Exhibit H, or such other form as the Administrative Agent may accept in its sole discretion, (c) third party consents, life of loan flood zone determinations, and evidence of flood insurance (if required), as the Administrative Agent may reasonably request; and (d) such lessee's affidavits and opinions of local counsel with respect to the Mortgages as the Administrative Agent may reasonably request. Each Phase I or Phase II environmental assessment described above shall be (i) prepared by an environmental expert acceptable to the Administrative Agent and (ii) dated as of a date within twelve (12) months (or such longer period agreed to by the Administrative Agent in its sole discretion) before the date of addition of such property to the Property Pool).

"Recipient" means the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder.

"Register" has the meaning specified in Section 10.06(c).

"Regulation U" means Regulation U of the FRB, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Related Agreements" has the meaning specified in Section 2.13(d).

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors, consultants, service providers and representatives of such Person and of such Person's Affiliates.

~~"Relevant Governmental Body" means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.~~

"Remaining Property" has the meaning specified in the definition of "Collateral Substitution Test".

"Removal Effective Date" has the meaning specified in Section 9.06(b).

"Removal Event" has the meaning specified in the definition of "Syndicated Credit Agreement".

"Removed Property" has the meaning specified in the definition of "Collateral Substitution".

"Rental Vehicle" means a New Vehicle less than two years old owned by a New Vehicle Borrower and purchased directly from a manufacturer as a New Vehicle and that is used as a service or daily loaner vehicle or is periodically subject to a rental contract with customers of the New Vehicle Borrower for loaner or rental periods of up to sixty (60) consecutive days or is used by dealership personnel in connection with parts and service operations. Rental Vehicles may be registered with applicable Governmental Authorities in the ordinary course of business.

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

"Required Lenders" means, as of any date of determination, Lenders whose Commitments aggregate more than 50% of the Aggregate Term Loan Commitments, provided that, if the Commitment of each Lender to make Term Loans has been terminated pursuant to Section 2.01 or Section 8.02, the Commitments shall be calculated based on the Total Outstandings; provided that the Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

"Rescindable Amount" has the meaning as defined in Section 2.10(b)(ii).

“Resignation Effective Date” has the meaning specified in Section 9.06(a).

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Responsible Officer” means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer or controller of a Loan Party and solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01, the secretary or any assistant secretary of a Loan Party and, solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party. To the extent requested by the Administrative Agent, each Responsible Officer will provide an incumbency certificate and to the extent requested by the Administrative Agent, appropriate authorization documentation, in form and substance satisfactory to the Administrative Agent.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of the Company or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to the Company’s or any Subsidiary’s stockholders, partners or members (or the equivalent Person thereof).

“Restricted Subsidiary” means each direct or indirect Subsidiary of the Company that (i) is not an Immaterial Subsidiary, is not a Captive Insurance Company, is not a Specified Insurance Subsidiary and is not a Designated Escrow Subsidiary, (ii) owns or operates a dealership or (iii) owns any real estate used in the operation of a dealership.

“Revolving Administrative Agent” has the meaning specified in the definition of “Syndicated Credit Agreement”.

“Sanction(s)” means any international economic sanction administered or enforced by the United States Government (including without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of ~~The McGraw Hill Companies~~, S&P Global Inc. and any successor thereto.

“Scheduled Unavailability Date” has the meaning specified in Section 3.03(b).

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Second Amendment” means that certain Second Amendment to Credit Agreement, dated as of the Second Amendment Effective Date, by and among, the Company, the Borrowers, the Guarantors party thereto, the Lenders and the Administrative Agent.

“Second Amendment Effective Date” means May 25, 2022.

“Secured Hedge Agreement” means any Swap Contract permitted under Article VII that is entered into by and between any Loan Party and any Hedge Bank.

“Secured Parties” means, collectively, the Administrative Agent, the Lenders, the Hedge Banks, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section

9.05, and the other Persons the Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Security Instruments.

“Security Instruments” means, collectively or individually as the context may indicate, any Mortgage, any Joinder Agreements, and all other agreements, instruments and other documents, whether now existing or hereafter in effect, pursuant to which any Borrower, any other Loan Party, or any other Person shall grant or convey to the Administrative Agent, for the benefit of the Secured Parties a Lien in, or any other Person shall acknowledge any such Lien in, property as security for all or any portion of the Obligations and any other obligation under any Loan Document.

~~“SOFR Early Opt in” means the Administrative Agent and the Company have elected to replace LIBOR pursuant to (a) an Early Opt in Election and (b) Section 3.03(c)(i) and paragraph (a) of the definition of “Benchmark Replacement.”~~ “SOFR Early Opt in” means the Secured Overnight Financing Rate as administered by the Federal Reserve Bank of New York (or a successor administrator).

“SOFR Adjustment” with respect to Daily Simple SOFR means 0.10% (10 basis points).

“Solvent” and “Solvency” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Specified Event of Default” means an Event of Default arising under any or all of Sections 8.01(a), 8.01(f), or 8.01(g).

“Specified Insurance Subsidiary” means (a) each of Landcar Casualty Company, Landcar Agency, Inc., and Landcar Administration Company, or (b) any insurance company organized under the laws of a state of the United States which company is either (i) formed by the Company or any of its Subsidiaries or (ii) acquired by the Company or any of its Subsidiaries or Affiliates in connection with any Permitted Acquisition, in each case of clauses (a), (b)(i) and (b)(ii) so long such entity is and remains a regulated entity and the sole purpose of such entity is providing extended service contracts and other consumer protection products to customers of the Vehicle Borrowers.

“Specified Loan Party” means any Loan Party that is not then an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to Section 10.20).

“Specified Representations” means the representations and warranties (including to the extent incorporated by reference in other Loan Documents) set forth in Section 5.01(a), Section 5.01(b)(ii) (solely with respect to corporate, limited liability company or partnership power and authority), Section 5.02 (solely with respect to authorization of execution, delivery and performance of the Loan Documents by corporate or other organizational action), Section 5.02(a), Section 5.02(b)(i) (solely with respect to material Franchise Agreements or Framework Agreements, material lease agreements and other material agreements with manufacturers or distributors of Vehicles), Section 5.02(c), Section 5.04, Section 5.06(a), Section 5.14, Section 5.21, Section 5.22, Section 5.25, and Section 5.26.

“Subordinated Indebtedness” means all Indebtedness of the Company or its Subsidiaries which (a) is subordinated to the Obligations contained herein in a manner reasonably acceptable to the Administrative Agent or has subordination terms substantially similar to those in the Prior Indenture, (b)

without limitation of any other provision herein (including [Section 7.16](#)), does not require any payment of principal (or give the holder thereof any rights to require repurchase of such Indebtedness through put rights or otherwise) prior to the date that is 30 days after the Maturity Date (other than reasonable and customary prepayment, redemption, repurchase or defeasance obligations in connection with (i) sales of assets (so long as the terms relating thereto are not materially less favorable to the Loan Parties than the comparable terms set forth in the Prior Indenture), (ii) a change in control and (iii) the exercise of remedies in connection with the occurrence of an event of default), (c) such other Indebtedness has interest rates and fees that are not in excess of the rates and fees standard in the market at the time such Indebtedness is incurred as determined by the Company in good faith, (d) has, or the Administrative Agent (in its reasonable discretion after Reasonable Review (defined below)) has determined that such Indebtedness has, standstill and blockage provisions with regard to payments and enforcement actions that are no more adverse to the Lenders than those in the Prior Indenture (as such standstill and blockage provisions relate to the Existing Credit Agreement lenders and lenders that provide Vehicle floorplan financing to the Company or any of its Subsidiaries), and (e) the terms relating to amortization, maturity, collateral (if any), and other material terms of such Indebtedness and of any agreement entered into and of any instrument issued in connection therewith, taken as a whole, are not materially less favorable to the Loan Parties than the terms of the Prior Indenture, in each case as determined by the Company in good faith. For the purposes of clause (d) above, “[Reasonable Review](#)” means that the Administrative Agent has had the opportunity and reasonable time to review copies of the definitive documentation for such Indebtedness, which copies have been provided to the Administrative Agent by the Company or its Subsidiaries.

“[Subordination and Attornment Agreement](#)” has the meaning specified in [Section 7.23](#).

“[Subsidiary](#)” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Company and shall include, without limitation, the Unrestricted Subsidiaries.

“[Subsidiary Guarantors](#)” means, collectively, all Subsidiaries executing the Subsidiary Guaranty on the Closing Date and all other Subsidiaries that enter into a Joinder Agreement as a Subsidiary Guarantor.

“[Subsidiary Guaranty](#)” means the Subsidiary Guaranty Agreement made by the Subsidiary Guarantors in favor of the Administrative Agent and the Lenders, substantially in the form of [Exhibit E](#) as supplemented from time to time by execution and delivery of Joinder Agreements pursuant to [Section 6.14](#) and as otherwise supplemented, amended, or modified from time to time.

“[Successor Rate](#)” has the meaning specified in [Section 3.03\(b\)](#).

“[Swap Contract](#)” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Obligations” means with respect to any Guarantor any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Syndicated Borrower” means a “Borrower” as defined in the Syndicated Credit Agreement.

“Syndicated Credit Agreement” means that certain Third Amended and Restated Credit Agreement dated as of September 25, 2019 among the Company, as a Borrower, certain of its Subsidiaries as Vehicle Borrowers, Bank of America, N.A., as Administrative Agent (in such capacity, the “Revolving Administrative Agent”), Revolving Swing Line Lender, New Vehicle Floorplan Swing Line Lender and Used Vehicle Floorplan Swing Line Lender and L/C Issuer, and the other lenders party thereto, as the same Third Amended and Restated Credit Agreement may be amended, amended and restated, modified, supplemented or replaced from time to time, provided, that, at the time upon which Bank of America (i) is no longer the Revolving Administrative Agent or (ii) is no longer the left-lead arranger (either event of clause (i) or (ii) above being hereinafter referred to as a “Removal Event”) under such facility (including any such replacement facility), any references herein to the Syndicated Credit Agreement shall be to the Syndicated Credit Agreement as in effect immediately prior to such Removal Event. In the event that (x) all outstanding loans and other obligations under the then existing Syndicated Credit Agreement have been paid in full (other than (1) contingent indemnification obligations as to which no claim has been made and (2) obligations and liabilities under secured hedge agreements as to which arrangements satisfactory to the applicable hedge bank have been made), (y) all commitments under such Syndicated Credit Agreement have terminated and (z) such Syndicated Credit Agreement has not been replaced by a credit agreement that constitutes a Syndicated Credit Agreement (such event satisfying all of conditions (x), (y) and (z) being referred to as an “SCA Termination Event”), any references herein to the Syndicated Credit Agreement shall be to the Syndicated Credit Agreement as in effect immediately prior to such SCA Termination Event.

“Syndicated Loan Document” means a “Loan Document” as defined in the Syndicated Credit Agreement.

“Syndicated Loan Party” means a “Loan Party” as defined in the Syndicated Credit Agreement.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Loan” has the meaning set forth in Section 2.01.

“Term Loan Facility” means the term loan facility described in Section 2.01 providing for the Term Loan to the Borrowers by the Lenders on the Closing Date.

“Term Loan Commitment” means, as to each Lender, its obligation to make its portion of the Term Loan to the Borrowers pursuant to Section 2.01 and the other terms and conditions of this

Agreement, in the principal amount set forth opposite such Lender's name on Schedule 2.01, as such amounts may be adjusted from time to time in accordance with this Agreement. The initial aggregate amount of the Term Loan Commitments is \$184,365,000.

~~“Term SOFR” means, for the applicable corresponding tenor (or if any Available Tenor of a Benchmark does not correspond to an Available Tenor for the applicable Benchmark Replacement, the closest corresponding Available Tenor and if such Available Tenor corresponds equally to two Available Tenors of the applicable Benchmark Replacement, the corresponding tenor of the shorter duration shall be applied), the forward looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.~~

“Threshold Amount” means \$50,000,000.

“Total Credit Exposure” means, as to any Lender at any time, the sum of the unused Commitments of such Lender at such time, plus the aggregate principal amount at such time of such Lender's outstanding Term Loans.

“Total Outstandings” means, on any date, the aggregate outstanding principal amount of all Term Loans after giving effect to any borrowings and prepayments or repayments of Term Loans occurring on such date.

“Type” means with respect to a Term Loan, its character as a Base Rate Loan or a ~~Eurodollar Rate~~ Daily Simple SOFR Loan.

“UCC” means the Uniform Commercial Code as in effect in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“United States” and “U.S.” mean the United States of America.

“Unrestricted Subsidiaries” means all Subsidiaries of the Company other than the Restricted Subsidiaries.

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning specified in Section 3.01(e)(ii)(B)(III).

“Used Vehicle” means a Vehicle other than a New Vehicle.

“Vehicle” means any automobile or truck approved for highway use by any State of the United States.

“Write-Down and Conversion Powers” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the



Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

## 1.02 Other Interpretive Provisions

. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Any capitalized terms used herein but not defined herein that are defined in the UCC shall have the respective meanings assigned to such terms in the UCC. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) Any reference herein to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

## 1.03 Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with

that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Company and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded. Any additions to or exclusions from the computation of any financial item based upon FASB ASC 825 or FASB ASC 470-20 shall be detailed on the Compliance Certificate delivered pursuant to Section 6.02(a).

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Company or the Required Lenders shall so request, the Administrative Agent, the Required Lenders and the Company shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Company shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding anything else set forth herein, (i) any lease that was or would have been treated as an operating lease under GAAP as in effect on the Closing Date that would become or be treated as a capital lease solely as a result of a change in GAAP after the Closing Date shall always be treated as an operating lease for all purposes and at all times under this Agreement and (ii) the determination of whether a lease is to be treated as an operating lease or capital lease shall be made without giving effect to any change in accounting for leases pursuant to GAAP resulting from the implementation of Financial Accounting Standards Board ASU No. 2016-02, Leases (Topic 842), to the extent such adoption would require treating any lease (or similar arrangement conveying the right to use) as a capital lease where such lease (or similar arrangement) would not have been required to be so treated under GAAP as in effect on December 31, 2015; provided that, upon the request of the Administrative Agent, the Company shall nonetheless provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

(c) Consolidation of Variable Interest Entities. All references herein to consolidated financial statements of the Company and its Subsidiaries or to the determination of any amount for the Company and its Subsidiaries on a consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that the Company is required to consolidate pursuant to FASB ASC 810 as if such variable interest entity were a Subsidiary as defined herein.

(d) Pro Forma Treatment of Acquisitions and Dispositions. Consolidated EBITDAR will be calculated after giving pro forma effect to any Material Dispositions or Material Acquisitions occurring during the relevant period, or after the relevant period and on or prior to the date of determination, as if such dispositions or acquisitions occurred on the first day of such period, and which may include such adjustments as are permitted under Regulation S-X of the SEC; provided that any such pro forma adjustment of Consolidated EBITDAR shall not result in an increase of more than 10% of Consolidated EBITDAR prior to such adjustment (the "10% EBITDAR Cap"), unless (a) the Company provides to the Administrative Agent (i) the supporting calculations for such adjustment and (ii) such other information as the Administrative Agent may reasonably request to determine the accuracy of such calculations, or (b) the Administrative Agent (in its sole discretion) otherwise consents to such increase in excess of the 10% EBITDAR Cap.

If the calculation of Consolidated EBITDAR for any period gives pro forma effect to any disposition or acquisition, the other elements of the Consolidated Fixed Charge Coverage Ratio and Consolidated Total Lease Adjusted Leverage Ratio will also be calculated after giving pro forma effect to such acquisition or disposition, provided that if the pro forma adjustment of Consolidated EBITDAR resulting from such disposition or acquisition is limited as a result of the 10% EBITDAR Cap, then the pro forma adjustment to any other element of the Consolidated Fixed Charge Coverage Ratio or the Consolidated Total Lease Adjusted Leverage Ratio, as applicable, will likewise be limited on a proportional basis so that the amount of any other adjustment will be reduced by the same percentage as

the reduction in the amount of adjustment to Consolidated EBITDAR, and provided further, in any event, that any such pro forma adjustment of the numerator of the Consolidated Total Lease Adjusted Leverage Ratio (or the denominator of the Consolidated Fixed Charge Coverage Ratio) will not result in a decrease of more than 10% to the amount of such numerator (or denominator) prior to such adjustment (the "Applicable 10% Cap") unless (A) the Company provides to the Administrative Agent (1) the supporting calculations for such adjustment and (2) such other information as the Administrative Agent may reasonably request to determine the accuracy of such calculations, or (B) the Administrative Agent (in its sole discretion) otherwise consents to such decrease in excess of the Applicable 10% Cap. If in connection with any Material Acquisition, the Company or any Subsidiary acquires associated real estate, eliminating any leases on the real estate being acquired or any leases of a Subsidiary being acquired, then the rent associated with those leases will not be included in the numerator of the Consolidated Total Lease Adjusted Leverage Ratio.

(e) Rounding. Any financial ratios required to be maintained by the Company pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

#### **1.04 Times of Day**

. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

#### **1.05 Interest Rates**

(a) The Administrative Agent and the Lenders do not warrant, nor accept responsibility, nor shall the Administrative Agent or any of the Lenders have any liability with respect to the administration, submission or any other matter related to ~~the rates in the definition of "Eurodollar Rate"~~ Daily Simple SOFR or with respect to any rate that is an alternative or replacement for or successor to any of such rate (including, without limitation, any ~~LIBOR~~-Successor Rate) or the effect of any of the foregoing, or of any ~~LIBOR Successor Rate~~ Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions or other activities that affect any reference rate referred to herein, or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing) or any related spread or other adjustments thereto, in each case, in a manner adverse to the Borrowers. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing), in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrowers, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or other action or omission related to or affecting the selection, determination, or calculation of any rate (or component thereof) provided by any such information source or service.

(b) The parties hereto agree and acknowledge that for administrative purposes the provisions in this Agreement that are amended by the Second Amendment and that relate to Obligations accruing interest at the reference interest rates, including Daily Simple SOFR, shall go into effect as of June 1, 2022, and therefore, notwithstanding anything herein to the contrary, all outstanding Term Loans, shall in each case during the period from the Second Amendment Effective Date through and including May 31, 2022, accrue interest at the Eurodollar Rate or Base Rate (including, if applicable, the Default Rate based on the Eurodollar Rate or the Base Rate), and not Daily Simple SOFR. Without limiting the generality of the foregoing, during the period from the Second Amendment Effective Date through and including May 31, 2022, interest shall be subject to the provisions in this Agreement (including without limitation the relevant provisions contained in Sections 1.01, 1.05, 2.05, 2.08, 3.02,

3.03 and 3.04 of this Agreement) governing the Applicable Rate, Base Rate, Base Rate Loans, Eurodollar Rate Loans (as such terms were defined in this Agreement, and as such provisions were in effect, immediately prior to giving effect to the Second Amendment).

#### **1.06 References to Defined Terms in the Syndicated Credit Agreement**

. The following terms shall have the meanings assigned thereto in the Syndicated Credit Agreement:

- (i) Aggregate New Vehicle Floorplan Commitments,
- (ii) Aggregate Revolving Commitments,
- (iii) Aggregate Used Vehicle Floorplan Commitments,
- (iv) Available Unused Revolving Commitments,
- (v) Demonstrator,
- (vi) Excluded Property,
- (vii) Existing Credit Agreement,
- (viii) Floorplan Offset Amount,
- (ix) Limited Condition Acquisition,
- (x) New Vehicle Borrower,
- (xi) New Vehicle Floorplan Commitments,
- (xii) Permitted Floorplan Indebtedness,
- (xiii) Permitted FMCC Floorplan Indebtedness,
- (xiv) Permitted Service Loaner Indebtedness,
- (xv) Prepayment Test Amount,
- (xvi) Prepayment Test Amount Certificate,
- (xvii) Prior Indenture,
- (xviii) Pro Forma Prepayment Test Amount,
- (xix) Pro Forma Revolving Borrowing Base Certificate,
- (xx) Pro Forma Used Vehicle Floorplan Borrowing Base Certificate,
- (xxi) Qualified Sale/Leaseback Transaction,
- (xxii) Revolving Borrowing Base,
- (xxiii) Revolving Commitments,
- (xxiv) Service Loaner Intercreditor Agreement,

- (xxv) Total New Vehicle Floorplan Outstandings,
- (xxvi) Total Revolving Outstandings,
- (xxvii) Total Used Vehicle Floorplan Outstandings,
- (xxviii) Used Vehicle Floorplan Borrowing Base,
- (xxix) Used Vehicle Floorplan Commitments, and
- (xxx) Vehicle Borrower.

### **1.07 Limited Condition Acquisition**

. In the event that the Company notifies the Administrative Agent in writing that any proposed Acquisition is a Limited Condition Acquisition and that the Company wishes to test the conditions to such Limited Condition Acquisition and the availability of the Indebtedness incurred in connection with such Limited Condition Acquisition in accordance with this Section, then, notwithstanding anything to the contrary herein or in any other Loan Document, the following provisions shall apply:

(a) any condition to such Limited Condition Acquisition or such Indebtedness that requires that no Default or Event of Default shall have occurred and be continuing at the time of such Acquisition or the incurrence of such Indebtedness, shall be satisfied if (i) no Default or Event of Default shall have occurred and be continuing at the time of the execution of the definitive purchase agreement, merger agreement or other acquisition agreement governing such Limited Condition Acquisition and (ii) no Specified Event of Default shall have occurred and be continuing both immediately before and immediately after giving effect to such Limited Condition Acquisition and the incurrence of such Indebtedness;

(b) any condition to such Limited Condition Acquisition or such Indebtedness that the representations and warranties in this Agreement and the other Loan Documents shall be true and correct at the time of such Acquisition or the incurrence of such Indebtedness shall be subject to customary "SunGard" or other customary applicable "certain funds" conditionality provisions (including, without limitation, a condition that the representations and warranties under the relevant agreements relating to such Limited Condition Acquisition as are material to the Lenders providing such Indebtedness shall be true and correct, but only to the extent that the Company or its applicable Subsidiary has the right to terminate its obligations under such agreement as a result of a breach of such representations and warranties or the failure of those representations and warranties to be true and correct), so long as (i) all representations and warranties in this Agreement and the other Loan Documents are true and correct in all material respects (or in all respects in the case of any representation and warranty qualified by materiality or Material Adverse Effect) at the time of execution of the definitive purchase agreement, merger agreement or other acquisition agreement governing such Acquisition and (ii) all Specified Representations are true and correct both immediately before and immediately after giving effect to such Limited Condition Acquisition and the incurrence of such Indebtedness;

(c) any financial ratio test or condition to such Limited Condition Acquisition or the incurrence of such Indebtedness, may upon the written election of the Company delivered to the Administrative Agent prior to the execution of the definitive agreement for such Limited Condition Acquisition, be tested either (i) upon the execution of the definitive agreement with respect to such Limited Condition Acquisition or (ii) upon the consummation of the Limited Condition Acquisition and related incurrence of Indebtedness, in each case, after giving effect to the relevant Limited Condition Acquisition and related incurrence of Indebtedness, on a pro forma basis; provided that the failure to deliver a notice under this Section 1.07(c) prior to the date of execution of the definitive agreement for such Limited Condition Acquisition shall be deemed an election to test the applicable financial ratio under subclause (ii) of this Section 1.07(c); and

(d) if the Company has made an election with respect to any Limited Condition Acquisition to test a financial ratio test or condition at the time specified in clause (c)(i) of this Section, then in

connection with any subsequent calculation of any ratio or basket during the period commencing on the relevant date of execution of the definitive agreement with respect to such Limited Condition Acquisition until the earlier of (i) the date on which such Limited Condition Acquisition is consummated or (ii) the date that the definitive agreement for such Limited Condition Acquisition is terminated or expires without consummation of such Limited Condition Acquisition, any such ratio or basket shall be required to be satisfied assuming such Limited Condition Acquisition and other transactions in connection therewith (including the incurrence or assumption of Indebtedness) have not been consummated.

The foregoing provisions shall apply with similar effect during the pendency of multiple Limited Condition Acquisitions such that each of the possible scenarios is separately tested. For the avoidance of doubt, any election (or any portion thereof) made pursuant to this Section may be rescinded by the Company prior to the consummation of such Limited Condition Acquisition or incurrence of such Indebtedness and in such case the conditions applicable to such Acquisition or incurrence of Indebtedness shall be tested without giving effect to this [Section 1.07](#).

## ARTICLE II. THE COMMITMENTS AND CREDIT EXTENSIONS

### 2.01 Term Loan

. Subject to the terms and conditions set forth herein, each Lender severally, but not jointly, agrees to fund its Pro Rata Share of a term loan (each a “[Term Loan](#)” and collectively, the “[Term Loan](#)”) to the Borrowers on the Closing Date in an amount equal to such Lender’s Term Loan Commitment; provided, however, that after giving effect to the Borrowing of the Term Loan, the Total Outstandings on the Closing Date shall not exceed the Aggregate Term Loan Commitments. The principal amount of the Term Loan outstanding hereunder from time to time shall bear interest, and the Term Loan shall be repayable, in each case, as herein provided. No amount of the Term Loan repaid or prepaid by any Borrower may be reborrowed. The Term Loan may be Base Rate Loans or ~~Eurodollar Rate~~[Daily Simple SOFR](#) Loans, as further provided herein. Each Lender’s Term Loan Commitment shall automatically expire upon the funding of the Term Loan.

### 2.02 Borrowings, Conversions and Continuations of Term Loans.

(a) The Borrowing in respect of the Term Loan shall be made on the Closing Date as a Eurodollar Rate [Loan \(as defined in the Pre-Amendment Credit Agreement\)](#). ~~On April 1, 2022, the Term Loan shall be automatically converted to a Daily Simple SOFR~~ Loan. Each Borrowing and each conversion of Term Loans from one Type to the other, shall be made upon the Company’s irrevocable notice to the Administrative Agent, which may be given by (A) telephone, or (B) a Loan Notice; provided that any telephonic notice must be confirmed promptly by delivery to the Administrative Agent of a Loan Notice. Each such Loan Notice must be received by the Administrative Agent not later than 1:00 p.m. (i) one Business Day prior to the requested date of any Borrowing (if any) of ~~Eurodollar Rate~~[Daily Simple SOFR](#) Loans or of any conversion of ~~Eurodollar Rate~~[Daily Simple SOFR](#) Loans to Base Rate Loans, and (ii) one Business Day prior to the requested date of any Borrowing of Base Rate Loans. Each Borrowing of, conversion to or continuation of ~~Eurodollar Rate~~[Daily Simple SOFR](#) Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$100,000 in excess thereof. Each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Loan Notice shall specify (i) whether the Company is requesting a Borrowing or a conversion of Term Loans from one Type to the other, (ii) the requested date of the Borrowing or conversion, as the case may be (which shall be a Business Day), (iii) the principal amount of Term Loans to be borrowed, converted or continued, and (iv) the Type of Term Loans to be borrowed or to which existing Loans are to be converted. If the Company fails to provide a timely Loan Notice requesting a conversion of ~~Eurodollar Rate~~[Daily Simple SOFR](#) Loans to Base Rate Loans, such Loans shall, subject to [Article III](#), continue as ~~Eurodollar Rate~~[Daily Simple SOFR](#) Loans. If the Company fails to specify a Type of Term Loan in a Loan Notice, then the applicable Term Loans shall, subject to [Article III](#), be made as, or converted to, ~~Eurodollar Rate~~[Daily Simple SOFR](#) Loans.

(b) Following receipt of a Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the Term Loan, if any. Each Lender shall make the amount of its portion of the Term Loan available to the Administrative Agent in immediately available

funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.03 (and, if such Borrowing is an initial Credit Extension, Sections 4.01 and 4.02), the Administrative Agent shall make all funds so received available to the Company in like funds as received by the Administrative Agent by crediting the account of the Company on the books of Bank of America with the amount of such funds.

(c) At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Company and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

### **2.03 Prepayments**

. The Borrowers may, upon notice by the Company to the Administrative Agent pursuant to delivery to the Administrative Agent of a Notice of Loan Prepayment, at any time or from time to time voluntarily prepay the Term Loan in whole or in part without premium or penalty; provided that (i) such notice must be received by the Administrative Agent not later than 1:00 p.m. on the date of prepayment of such Term Loans; (ii) any prepayment of Term Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment, and the Type(s) of Term Loans to be prepaid. Each such prepayment shall be applied to the remaining installments of principal of the Term Loan, as the Company shall elect. The Administrative Agent will promptly notify each applicable Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by the Company, except as expressly provided below, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Each such prepayment shall be applied in accordance with the Lenders' respective Applicable Percentages.

### **2.04 Repayment of Term Loans.**

(a) Borrowers shall make quarterly amortization payments with respect to the Term Loan on each Principal Amortization Payment Date. Each such quarterly amortization payment shall be in an amount equal to 1.00000% of the initial principal amount of the Term Loan.

(b) The Borrowers shall repay to the Lender on the date of any Permitted Financed Property Disposition any amounts required to be paid as set forth in the definition of Permitted Financed Property Disposition. Each such prepayment shall be applied to the remaining installments of principal of the Term Loan in the inverse order of maturity.

(c) The Borrowers shall repay to the Lenders on the Maturity Date the aggregate principal amount of all Term Loans outstanding on such date.

### **2.05 Interest.**

(a) Subject to the provisions of subsections (b) and (d) below, (i) each ~~Eurodollar Rate~~Daily Simple SOFR Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to ~~the Eurodollar Rate~~Daily Simple SOFR plus the Applicable Rate; and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) (i) If any amount of principal of any Term Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any amount (other than principal of any Term Loan) payable by any Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods),

whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Upon the request of the Required Lenders, while any Event of Default exists (other than as set forth in clauses (b)(i) and (b)(ii) above), the applicable Borrowers shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Term Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

#### **2.06 Automatic Debit Authorization**

. The Company and each Borrower hereby agree that interest on Term Loans and principal payments with respect to Term Loans required to be paid pursuant to this Agreement may be deducted from the Company Account. Without limiting the generality of the foregoing, the Administrative Agent may debit such account (a) for interest on each Interest Payment Date and on the Maturity Date and (b) for scheduled principal payments on each Principal Amortization Payment Date and on the Maturity Date. The Company and the Borrowers will maintain sufficient funds in the account on the dates the Administrative Agent enters debits authorized by this Section. If there are insufficient funds in the account on the date the Administrative Agent enters any debit authorized by this Agreement, the debit will be reversed. Nothing contained in this Section will alter any obligation of any Loan Party to pay any amount required by this Agreement or any other Loan Document.

#### **2.07 Fees**

. The Company shall pay to the Administrative Agent and the Lenders such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

**2.08 Computation of Interest and Fees.** All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to ~~the Eurodollar Rate~~ Daily Simple SOFR) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Term Loan for the day on which the Term Loan is made, and shall not accrue on a Term Loan, or any portion thereof, for the day on which the Term Loan or such portion is paid, provided that any Term Loan that is repaid on the same day on which it is made shall, subject to Section 2.10(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

#### **2.09 Evidence of Debt**

. The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of



any Lender made through the Administrative Agent, the Borrowers shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Term Loan. Each Lender may attach schedules to its Notes and endorse thereon the date, Type (if applicable), amount and maturity of its Term Loan and payments with respect thereto.

## **2.10 Payments Generally; Administrative Agent's Clawback.**

(a) General. All payments to be made by any Borrower shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by any Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by any Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b)

(i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to 12:00 noon on the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 and may, in reliance upon such assumption, make available to the Company or applicable Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender, the Company and the other Borrowers severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Company or applicable Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Company or any other Borrower, the interest rate applicable to Base Rate Loans. If the Company or any other Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Company or applicable Borrower the amount of such interest paid by the Company or such Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Term Loan included in such Borrowing. Any payment by the Company or any other Borrower shall be without prejudice to any claim the Company or any other Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrowers; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Company (on its own behalf or on behalf of another Borrower) prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that such Borrower will not make such payment, the Administrative Agent may assume that such Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders, as the case may be, the amount due.

With respect to any payment that the Administrative Agent makes for the account of the Lenders hereunder as to which the Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to

as the “Rescindable Amount”): (1) the Borrowers have not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by the Borrowers (whether or not then owed); or (3) the Administrative Agent has for any reason otherwise erroneously made such payment; then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Lender in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or any Borrower with respect to any amount owing under this subsection (b) shall be conclusive absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Term Loan to be made by such Lender to any Borrower as provided in the foregoing provisions of this Article II, and such funds are not made available to such Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders to make Term Loans and to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender to make its portion of any Term Loan or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its portion of any Term Loan or to make its payment under Section 10.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Term Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Term Loan in any particular place or manner.

(f) Insufficient Funds. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, toward payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

## **2.11 Sharing of Payments by Lenders**

. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Term Loans made by it and accrued interest thereon greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase from the other applicable Lenders (for cash at face value) participations in the Term Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Term Loans and other amounts owing them, provided that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by or on behalf of any Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Term Loans to any assignee or participant, other than an

assignment to the Company or any Subsidiary thereof (as to which the provisions of this Section shall apply).

Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower in the amount of such participation.

## **2.12 Defaulting Lenders.**

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.01 and in the definition of Required Lenders.

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 10.08), shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; *second*, as the Company may request (so long as no Default or Event of Default exists), to the funding of any Term Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *third*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; *fourth*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Company as a result of any judgment of a court of competent jurisdiction obtained by the Company against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and *fifth*, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Term Loans in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Term Loans were made at a time when the conditions set forth in Section 4.03 were satisfied or waived, such payment shall be applied solely to pay the Term Loans of all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Term Loans of that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender pursuant to this Section 2.12(a)(ii) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(b) Defaulting Lender Cure. If the Company and the Administrative Agent agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase that portion of outstanding Term Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Term Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages, whereupon that Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of any Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

## **2.13 Borrowers.**

(a) Effective as of the date hereof, each Subsidiary that has executed this Agreement as a Borrower shall be a “Borrower” hereunder and may receive or cause the Company (as agent for such Subsidiary) to receive Term Loans for the account of such Subsidiary on the terms and conditions set forth in this Agreement.

(b) In the event of any proposed Collateral Substitution wherein any Subsidiary which owns the real property proposed to be a Financed Property in connection with such Collateral Substitution is not an existing Borrower, the Company shall designate such Subsidiary as a Borrower and such Subsidiary shall deliver the documents required by Section 6.14 prior to or substantially simultaneously with such proposed Financed Property entering the Property Pool, including the delivery of a Joinder Agreement executed by such Subsidiary identifying such Subsidiary as a Borrower. The parties hereto acknowledge and agree that prior to any such Subsidiary becoming entitled to receive Term Loans hereunder, the Lender shall have received the documents required by Section 6.14. Upon satisfaction of the foregoing requirements and any other requirements herein applicable to any such Subsidiary becoming a Borrower hereunder and any proposed Financed Property entering the Property Pool, the Lender agrees to permit such Borrower to receive Term Loans hereunder on the terms and conditions set forth herein, and each of the parties agrees that such Borrower otherwise shall be a Borrower for all purposes of this Agreement.

(c) Notwithstanding any other provision of this Agreement, each Borrower shall be jointly and severally liable as a primary obligor, and not merely as surety, for any and all Obligations, whether voluntary or involuntary and however arising, whether direct or acquired by the Lender by assignment or succession, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined (such Obligations, the “Borrowers’ Liabilities”).

(d) Each Borrower expressly waives any and all defenses now or hereafter arising or asserted by reason of (i) any lack of legality, validity or enforceability of this Agreement, of any Note, of any other Loan Document, or of any other agreement or instrument creating, providing security for, or otherwise relating to any of the Obligations or any guaranty of any of the Borrowers’ Liabilities (the Loan Documents and all such other agreements and instruments being collectively referred to as the “Related Agreements”); (ii) any action taken under any of the Related Agreements, any exercise of any right or power therein conferred, any failure or omission to enforce any right conferred thereby, or any waiver of any covenant or condition therein provided; (iii) any acceleration of the maturity of any of the Borrowers’ Liabilities or of any other obligations or liabilities of any Person under any of the Related Agreements; (iv) any release, exchange, non-perfection, lapse in perfection, disposal, deterioration in value, or impairment of any security for any of the Borrowers’ Liabilities, or for any other obligations or liabilities of any Person under any of the Related Agreements; (v) any dissolution of any Borrower, any Loan Party or any other party to a Related Agreement, or the combination or consolidation of any Borrower, any Loan Party or any other party to a Related Agreement into or with another entity or any transfer or disposition of any assets of any Borrower, any Loan Party or any other party to a Related Agreement; (vi) any extension (including without limitation extensions of time for payment), renewal, amendment, restructuring or restatement of, any acceptance of late or partial payments under, or any change in the amount of any borrowings or any credit facilities available under, this Agreement, any Note or any other Loan Document or any other Related Agreement, in whole or in part; (vii) the existence, addition, modification, termination, reduction or impairment of value, or release of any other guaranty (or security therefor) of the Borrowers’ Liabilities; (viii) any waiver of, forbearance or indulgence under, or other consent to any change in or departure from any term or provision contained in this Agreement, any other Loan Document or any other Related Agreement, including without limitation any term pertaining to the payment or performance of any of the Borrowers’ Liabilities, or any of the obligations or liabilities of any party to any other Related Agreement; and (ix) any other circumstance whatsoever (with or without notice to or knowledge of such Borrower) which may or might in any manner or to any extent vary the risks of such Borrower, or might otherwise constitute a legal or equitable defense available to, or discharge of, a surety or a guarantor, including without limitation any right to require or claim that resort be had to any Borrower or any other Loan Party or to any collateral in respect of the Borrowers’ Liabilities. It is the express purpose and intent of the parties hereto that the joint and several liability of each Borrower for the Borrowers’ Liabilities shall be absolute and unconditional under any and all circumstances and shall not be discharged except by payment as herein provided. Notwithstanding the foregoing, the liability of each Borrower with respect to its Borrowers’ Liabilities shall be limited to an

aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code of the United States or any comparable provisions of any applicable state law.

(e) Each Borrower hereby irrevocably appoints the Company as its agent for all purposes relevant to this Agreement and each of the other Loan Documents, including (i) the giving and receipt of notices, (ii) the execution and delivery of all documents, instruments and certificates contemplated herein and all modifications hereto, and (iii) the receipt of the proceeds of any Term Loan made by the Lender to any such Borrower hereunder. Any acknowledgment, consent, direction, certification or other action which might otherwise be valid or effective only if given or taken by all Borrowers, or by any Borrower acting singly, shall be valid and effective if given or taken only the Company, whether or not any such other Borrower joins therein. Any notice, demand, consent, acknowledgement, direction, certification or other communication delivered the Company in accordance with the terms of this Agreement shall be deemed to have been delivered the Company and each other Borrower.

### ARTICLE III. TAXES, YIELD PROTECTION AND ILLEGALITY

#### 3.01 Taxes

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws (as determined in the good faith discretion of the Administrative Agent) require the deduction or withholding of any Tax from any such payment by the Administrative Agent or a Loan Party, then the Administrative Agent or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Loan Party or the Administrative Agent shall be required by the Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding taxes, from any payment, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made. Notwithstanding the foregoing, if any Loan Party determines, in its good faith discretion, that the Administrative Agent did not or does not intend to withhold or deduct any Taxes that any Loan Party or the Administrative Agent is required to withhold or deduct from any payment then any Loan Party shall be entitled (after notification to the Administrative Agent) to make such deductions or withholdings.

(iii) If any Loan Party or the Administrative Agent shall be required by any applicable Laws other than the Code to withhold or deduct any Taxes from any payment, then (A) such Loan Party or the Administrative Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Loan Party or the Administrative Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable

under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrowers. Without limiting the provisions of subsection (a) above, the Company and each other Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnifications.

(i) The Company and each other Borrower shall, and does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Company by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error. The Company and each other Borrower shall, and does hereby, jointly and severally indemnify the Administrative Agent, and shall make payment in respect thereof within 10 days after demand therefor, for any amount which a Lender for any reason fails to pay indefeasibly to the Administrative Agent as required pursuant to Section 3.01(c)(ii) below; provided, that the Company and each other Borrower shall not be required to indemnify the Administrative Agent for any amount attributable to the Administrative Agent's gross negligence. Upon receipt of such indemnity payment and upon the request of the Company, the Administrative Agent hereby agrees to assign to the Company any rights for compensation against such defaulting Lender (other than the right of set off pursuant to the last sentence of Section 3.01(c)(ii) below) with respect to the amount it has been indemnified by the Company or other Borrower.

(ii) Each Lender shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, (x) the Administrative Agent against any Indemnified Taxes attributable to such Lender (but only to the extent that any Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrowers to do so), (y) the Administrative Agent and the Borrowers, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.06(d) relating to the maintenance of a Participant Register and (z) the Administrative Agent and the Borrowers, as applicable, against any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent or a Borrower in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii).

(d) Evidence of Payments. Upon request by the Company, any other Borrower or the Administrative Agent, as the case may be, after any payment of Taxes by the Company, any other Borrower or by the Administrative Agent to a Governmental Authority as provided in this Section 3.01, the Company or such Borrower shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Company or such Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Company or such Borrower or the Administrative Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Company and the Administrative Agent, at the time or times reasonably requested by the Company or the Administrative Agent and at the time or times prescribed by applicable law, such properly completed and executed documentation reasonably requested by the Company or the Administrative Agent or prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Company or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Company or the Administrative Agent as will enable the Company or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), (ii)(B), and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that any Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Company and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Company or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Company and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Company or the Administrative Agent), whichever of the following is applicable:

(I) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN-E (or W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN-E (or W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(II) executed copies of IRS Form W-8ECI;

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit I-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of any Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN-E (or W-8BEN, as applicable); or

(IV) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E (or W-8BEN, as applicable), a U.S. Tax Compliance Certificate substantially in the form of Exhibit I-2 or Exhibit I-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit I-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Company and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Company or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Company or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Company and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Company or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Company or the Administrative Agent as may be necessary for the Company and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. For purposes of determining withholding Taxes imposed under FATCA from and after the effective date of this Agreement, the Borrowers and the Administrative Agent shall treat (and the Lenders hereby authorize the Administrative Agent to treat) the Term Loans hereunder and this Agreement as not qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Company and the Administrative Agent in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender. If any Recipient determines, in its sole discretion, that it has received a refund of any Taxes as to which it has been indemnified by the Company or any other Borrower or with respect to which the Company or any Borrower has paid additional amounts pursuant to this Section 3.01, it shall pay to the Company or such Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Company under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Company and each other



Borrower, upon the request of the Recipient, agrees to repay the amount paid over to the Company or such Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to the Company or any other Borrower pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Company, any other Borrower, or any other Person.

(g) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

### 3.02 Illegality

If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to perform any of its obligations hereunder or make, maintain or fund or charge any interest with respect to any Credit Extension, or to determine or charge interest rates based upon ~~the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market~~ Daily Simple SOFR, then, on notice thereof by such Lender to the Company through the Administrative Agent, (i) any obligation of such Lender to issue, make, maintain, fund or charge interest with respect to any Credit Extension or continue ~~Eurodollar Rate~~ Daily Simple SOFR Loans or to convert Base Rate Loans to ~~Eurodollar Rate~~ Daily Simple SOFR Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the ~~Eurodollar Rate~~ Daily Simple SOFR component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the ~~Eurodollar Rate~~ Daily Simple SOFR component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Company that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Company and each other Borrower (jointly and severally) shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all ~~Eurodollar Rate~~ Daily Simple SOFR Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the ~~Eurodollar Rate~~ Daily Simple SOFR component of the Base Rate), ~~either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans immediately~~, and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon ~~the Eurodollar Rate~~ Daily Simple SOFR, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the ~~Eurodollar Rate~~ Daily Simple SOFR component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon ~~the Eurodollar Rate~~ Daily Simple SOFR. Upon any such prepayment or conversion, the Company and each other Borrower (jointly and severally) shall also pay accrued interest on the amount so prepaid or converted.

### 3.03 Inability to Determine Rates

(a) ~~(a)~~ If in connection with any request for a ~~Eurodollar Rate~~ Daily Simple SOFR Loan or a conversion ~~to of Base Rate Loans to Daily Simple SOFR Loans~~ or a continuation ~~thereof of any of such Term Loans, as applicable~~, (i) the Administrative Agent determines ~~that (A) Dollar deposits are not being offered to banks in the London interbank Eurodollar market for the applicable amount and Interest Period~~

~~of such Eurodollar Rate Loan (which determination shall be conclusive absent manifest error) that (A) no Successor Rate has been determined in accordance with Section 3.03(b), and the circumstances under clause (i) of Section 3.03(b) or the Scheduled Unavailability Date has occurred, or (B) (x) adequate and reasonable means do not otherwise exist for determining the Eurodollar Rate Daily Simple SOFR for any requested Interest Period with respect to a proposed Eurodollar Rate Daily Simple SOFR Loan or in connection with an existing or proposed Base Rate Loan and (y) the circumstances described in Section 3.03(c)(1) do not apply (in each case with respect to this clause (i), "Impacted Loans"), or (ii) the Administrative Agent or the Required Lenders determine that for any reason the Eurodollar Rate for any requested Interest Period that Daily Simple SOFR with respect to a proposed Eurodollar Rate Term Loan does not adequately and fairly reflect the cost to such Lenders of funding such Eurodollar Rate Term Loan, the Administrative Agent will promptly so notify the Company and each Lender.~~

Thereafter, (x) the obligation of the Lenders to make or maintain ~~Eurodollar Daily Simple SOFR Loans, or to convert Base Rate Loans to Daily Simple SOFR Loans~~, shall be suspended; (to the extent of the affected ~~Eurodollar Rate Daily Simple SOFR Loans or Interest Periods~~), and (y) in the event of a determination described in the preceding sentence with respect to the ~~Eurodollar Rate Daily Simple SOFR~~ component of the Base Rate, the utilization of the ~~Eurodollar Rate Daily Simple SOFR~~ component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (or, in the case of a determination by the Required Lenders described in clause (ii) of this Section 3.03(a), until the Administrative Agent upon instruction of the Required Lenders) revokes such notice.

Upon receipt of such notice, (i) the Company may revoke any pending request for a Borrowing of, or conversion to, or continuation of ~~Eurodollar Rate Daily Simple SOFR Loans~~ (to the extent of the affected ~~Eurodollar Rate Daily Simple SOFR Loans or Interest Periods~~) or, failing that, will be deemed to have converted such request into a request for a Committed Borrowing of Base Rate Loans in the amount specified therein and (ii) any outstanding Daily Simple SOFR Loans shall be deemed to have been converted to Base Rate Loans immediately.

~~(b) Notwithstanding the foregoing, if the Administrative Agent has made the determination described in clause (i) of Section 3.03(a), the Administrative Agent, in consultation with the Company and the affected Lenders, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (1) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under clause (i) of the first sentence of Section 3.03(a), (2) the Administrative Agent or the Required Lenders notify the Administrative Agent and the Company that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans, or (3) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Term Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Company written notice thereof.~~

~~(c)(b) Replacement of Daily Simple SOFR or Successor Rate. Notwithstanding anything to the contrary herein in this Agreement or in any other Loan Document Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Company or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Company) that the Company or Required Lenders (as applicable) have determined, that:~~

~~(i) On March 5, 2021 the Financial Conduct Authority ("FCA"), the regulatory supervisor of LIBOR's administrator ("IBA"), announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1 week, 1 month, 2 month, 3 month, 6 month and 12 month U.S. Dollar LIBOR tenor settings. On the earliest of (A) the date that all Available Tenors of U.S. Dollar LIBOR have permanently or indefinitely ceased to be provided by IBA or have been announced by the FCA pursuant to public statement or publication of information to be no longer representative, (B) June 30, 2023 and (C) the Early Opt in Effective Date in respect of a SOFR Early Opt in, if the then current Benchmark is LIBOR, the Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any~~

~~Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Loan Document. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.~~

~~(ii) — (x) Upon (A) the occurrence of a Benchmark Transition Event or (B) a determination by the Administrative Agent that neither of the alternatives under clause (g) of the definition of Benchmark Replacement are available, the Benchmark Replacement will replace the then current Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders (and any such objection shall be conclusive and binding absent manifest error); provided that solely in the event that the then current Benchmark at the time of such Benchmark Transition Event is not a SOFR-based rate, the Benchmark Replacement therefor shall be determined in accordance with clause (a) of the definition of Benchmark Replacement unless the Administrative Agent determines that neither of such alternative rates is available.~~

~~(y) On the Early Opt in Effective Date in respect of an Other Rate Early Opt in, the Benchmark Replacement will replace LIBOR for all purposes hereunder and under any Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Loan Document.~~

~~(iii) — At any time that the administrator of the then current Benchmark has permanently or indefinitely ceased to provide such Benchmark or such Benchmark has been announced by the regulatory supervisor for the administrator of such Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored, the Borrowers may revoke any request for a borrowing of, conversion to or continuation of Loans to be made, converted or continued that would bear interest by reference to such Benchmark until the Company's receipt of notice from the Administrative Agent that a Benchmark Replacement has replaced such Benchmark, and, failing that, the Borrowers will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans. During the period referenced in the foregoing sentence, the component of Base Rate based upon the Benchmark will not be used in any determination of Base Rate.~~

(i) adequate and reasonable means do not exist for ascertaining Daily Simple SOFR, including, without limitation, because the Daily Simple SOFR Published Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) the Federal Reserve Bank of New York or any successor administrator of the Daily Simple SOFR Published Rate or a Governmental Authority having jurisdiction over the Administrative Agent or such administrator with respect to its publication of Daily Simple SOFR, in each case acting in such capacity, has made a public statement identifying a specific date after which Daily Simple SOFR or the Daily Simple SOFR Published Rate shall or will no longer be made available, or permitted to be used for determining the interest rate of U.S. dollar denominated syndicated loans, or shall or will otherwise cease, provided that, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent, that will continue to provide Daily Simple SOFR after such specific date (the latest date on which Daily Simple SOFR or the Daily Simple SOFR Published Rate is no longer available permanently or indefinitely, the "Scheduled Unavailability Date");

then, on a date and time determined by the Administrative Agent (any such date, the "Daily Simple SOFR Replacement Date"), which date shall be on the relevant interest payment date, as

applicable, for interest calculated and, solely with respect to clause (ii) above, no later than the Scheduled Unavailability Date, the Administrative Agent and the Company may amend this Agreement solely for the purpose of replacing Daily Simple SOFR or any then current Successor Rate in accordance with this Section 3.03 at the relevant interest payment date or payment period for interest calculated, as applicable, with an alternative benchmark rate giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities syndicated and agented in the United States for such alternative benchmark, and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities syndicated and agented in the United States for such benchmark, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate and adjustments, shall constitute a "Successor Rate". Any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Company unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to such amendment.

The Administrative Agent will promptly (in one or more notices) notify the Company and each Lender of the implementation of any Successor Rate.

Any Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, such Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than zero, the Successor Rate will be deemed to be zero for the purposes of this Agreement and the other Loan Documents.

~~(iv) In connection with the implementation and administration of a Benchmark Replacement Successor Rate, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Company and the Lenders reasonably promptly after such amendment becomes effective.~~

~~(v) The Administrative Agent will promptly notify the Company and the Lenders of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by the Administrative Agent pursuant to this Section 3.03(c), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 3.03(c).~~

~~(vi) At any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then current Benchmark is a term rate (including Term SOFR or LIBOR), then the Administrative Agent may remove any tenor of such Benchmark that is unavailable or non-representative for Benchmark (including Benchmark Replacement) settings and (B) the Administrative Agent may reinstate any such previously removed tenor for Benchmark (including Benchmark Replacement) settings~~

For purposes of this Section 3.03, those Lenders that either have not made, or do not have an obligation under this Agreement to make, the relevant Term Loans in Dollars shall be excluded from any determination of Required Lenders.

### 3.04 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender ~~(except any reserve requirement contemplated by Section 3.04(e));~~

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or ~~Eurodollar Rate~~ Daily Simple SOFR Loans made by such Lender or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting, continuing or maintaining any Term Loan (or of maintaining its obligation to make any such Term Loan), or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Company and each other Borrower (jointly and severally) will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Term Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Company and each other Borrower (jointly and severally) will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Company shall be conclusive absent manifest error. The Company and each other Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's right to demand such compensation, provided that neither the Company nor any other Borrower shall be required to compensate a Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Company of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

~~(e) Reserves on Eurodollar Rate Loans. The Company and each other Borrower, jointly and severally, shall pay to each Lender, as long as such Lender shall be required to maintain reserves with~~

~~respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurodollar Rate Loan equal to the actual costs of such reserves allocated to such Term Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error), which shall be due and payable on each date on which interest is payable on such Term Loan, provided the Company shall have received at least 10 days' prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice 10 days prior to the relevant Interest Payment Date, such additional interest shall be due and payable 10 days from receipt of such notice.~~

### **3.05 Mitigation Obligations; Replacement of Lenders.**

(a) Designation of a Different Lending Office. Each Lender may make any Credit Extension to the Borrowers through any Lending Office, provided that the exercise of this option shall not affect the obligation of the Borrowers to repay the Credit Extension in accordance with the terms of this Agreement. If any Lender requests compensation under Section 3.04, or the Company or any other Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then at the request of the Company such Lender shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Term Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Company and each other Borrower (jointly and severally) hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Company or any other Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 3.05(a), the Company may replace such Lender in accordance with Section 10.13.

### **3.06 Survival**

. All of the Company's and each other Borrower's obligations under this Article III shall survive termination of the Aggregate Term Loan Commitments, repayment of all other Obligations hereunder, and resignation of the Administrative Agent.

## **ARTICLE IV. CONDITIONS PRECEDENT TO EFFECTIVENESS AND CREDIT EXTENSIONS**

### **4.01 Conditions to Effectiveness of Agreement**

. The effectiveness of this Agreement is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which (in the case of clauses (i), (ii), (iii), (v), (vi) and (vii)) shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each of which (in the case of clauses (i), (ii), (iii), (vi) and (vii)) shall be properly executed by a Responsible Officer of the signing Loan Party, each dated the Effective Date (or, in the case of certificates of governmental officials, a recent date before the Effective Date) and each in form and substance satisfactory to the Administrative Agent and each of the Lenders:

(i) executed counterparts of (A) this Agreement and (B) each Guaranty required to be delivered in connection herewith, in each case, sufficient in number for distribution to the Administrative Agent, the Administrative Agent's counsel and the Company;

(ii) a Note executed by the Borrowers in favor of each Lender requesting a Note;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party;

(iv) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in the respective jurisdictions specified in Schedule 4.01(a)(iv), which includes each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(v) a favorable opinion of Jones Day, counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, in form and substance reasonably satisfactory to the Administrative Agent.

(vi) a certificate of a Responsible Officer of each Loan Party certifying that all consents (including pursuant to any Franchise Agreement or Framework Agreement), licenses and approvals required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party have been acquired and are in full force and effect; and

(vii) a form FR-U-1 executed by the Company and a duly authorized representation of the Administrative Agent.

(b) (i) Upon the reasonable request of any Lender made at least ten (10) days prior to the Effective Date, the Loan Parties shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act, in each case at least five (5) Business Days prior to the Effective Date and (ii) at least three (3) Business Days prior to the Effective Date, any Loan Party that qualifies as a “legal entity customer” under the Beneficial Ownership Regulation shall have delivered, to each Lender that so requests, a Beneficial Ownership Certification in relation to such Loan Party.

(c) Any fees required to be paid on or before the Effective Date shall have been paid.

(d) Unless waived by the Administrative Agent, the Company shall have paid all accrued fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced prior to or on the Effective Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the effective proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Company and the Administrative Agent).

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Effective Date specifying its objection thereto. Upon the occurrence of the Effective Date, the Administrative Agent shall notify the Company and each Lender of the occurrence of the Effective Date

#### **4.02 Conditions of Initial Credit Extension**

. The obligation of each Lender to make the Term Loan pursuant to Section 2.01 is subject to the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which (in the case of clauses (ii), (iii), (iv), (v), (vi) and (ix)(B)) shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each of which (in the case of clauses (iv), (v), (vi) and (ix)(B)) shall be properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Administrative Agent and each of the Lenders:

(i) [intentionally omitted];

(ii) a favorable opinion of Jones Day, counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, in form and substance reasonably satisfactory to the Administrative Agent;

(iii) a favorable opinion of local counsel to the Loan Parties in Texas, addressed to the Administrative Agent and each Lender in form and substance reasonably satisfactory to the Administrative Agent;

(iv) a certificate signed by a Responsible Officer of the Company certifying (A) that the conditions specified in Sections 4.03(a) and (b) that are required to be satisfied on or prior to the Closing Date have been satisfied, and (B) as to the absence of any action, suit or proceeding pending or, to the knowledge of the Company, threatened in any court or before any arbitrator or Governmental Authority relating to this Agreement, the other Loan Documents or the credit facilities hereunder;

(v) a certificate signed by the chief financial officer, treasurer or chief accounting officer of the Company, certifying that the Company individually is Solvent, and the Loan Parties taken as a whole are Solvent, in each case as of the Closing Date after giving effect to this Agreement, the other Loan Documents and Indebtedness pursuant hereto, the consummation of the Project Star Acquisition and the incurrence of the Term Loan;

(vi) (A) an executed authorization to share insurance information and (B) evidence that all insurance (including flood insurance, if applicable) required to be maintained pursuant to the Loan Documents has been obtained and is in effect, including endorsements naming the Administrative Agent (on behalf of the Secured Parties) as an additional insured or lender's loss payee, as the case may be, on all insurance policies maintained with respect to properties of the Company or any Loan Party constituting part of the Collateral;

(vii) UCC financing statements for filing in all places required by applicable law to perfect the Liens of the Administrative Agent for the benefit of the Secured Parties under the Security Instruments as a perfected Lien as to items of Collateral in which a security interest may be perfected by the filing of financing statements;

(viii) UCC search results with respect to each Loan Party (provided that promptly after the Closing Date the Borrower shall remove any Liens which are not Permitted Liens);

(ix) with respect to each Financed Property identified on Schedules 1.01(C) as of the Closing Date, each of the following, each of which shall be originals or telecopies (followed promptly by originals unless copies are otherwise specified) each in form and substance reasonably acceptable to the Administrative Agent:

(A) a copy of a FIRREA Appraisal;

(B) (x) an original Mortgage dated as of the Closing Date properly executed by a Responsible Officer of the signing Loan Party and evidence of the proper



recordation of such Mortgage in the appropriate filing office (or delivery of such Mortgage to the applicable title company for recordation), and (y) the Closing Date Real Estate Support Documents (including originals thereof where required by applicable Law) with respect to such Financed Property;

(C) evidence that such Financed Property is not a Flood Hazard Property or the Administrative Agent has determined that such Financed Property is not subject to Flood Requirements under applicable Law;

(D) a copy of each Lease of such Financed Property, if any, and any sublease or Memorandum of Lease associated therewith, if any; and

(x) evidence of payment of all real estate recordation fees and taxes with respect to perfecting the Liens on Collateral.

(b) The Administrative Agent shall have received evidence in form reasonably satisfactory to it that the Project Star Acquisition shall have been consummated on or prior to the Closing Date in accordance with the Project Star Leases in all material respects and all applicable requirements of law, without giving effect to any amendments, consents or waivers by the Company that are materially adverse to the Administrative Agent or the Lenders without the prior written consent of the Administrative Agent (such consent not to be unreasonably withheld, delayed or conditioned) (it being understood that any reduction in the purchase price of, or consideration for, the Project Star Acquisition is not material and adverse to the interests of the Administrative Agent or the Lenders, so long as such reduction in the cash consideration is less than 10.0% of the original purchase price).

(c) (i) Upon the reasonable request of any Lender made at least ten (10) days prior to the Closing Date, the Company shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act, in each case at least five (5) Business Days prior to the Closing Date with respect to any Person that will be a Loan Party on the Closing Date but was not a Loan Party on the Effective Date and (ii) at least three (3) Business Days prior to the Closing Date, any Person (a) that will be a Loan Party on the Closing Date but was not a Loan Party on the Effective Date and (b) that qualifies as a “legal entity customer” under the Beneficial Ownership Regulation shall have delivered, to each Lender that so requests, a Beneficial Ownership Certification in relation to such Loan Party.

(d) Any fees required to be paid on or before the Closing Date shall have been paid.

(e) Unless waived by the Administrative Agent, the Company shall have paid all accrued fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Company and the Administrative Agent).

(f) The Closing Date shall occur on or before June 30, 2021.

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.02, each Lender that has funded a portion of the Term Loan shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Each of the Administrative Agent and each Lender that has signed this Agreement hereby acknowledges and agrees that the conditions set forth in clauses (a)(vi), (a)(ix)(A) and (a)(ix)(C) above have been satisfied as of the Effective Date.

#### 4.03 Conditions to all Credit Extensions and Collateral Substitutions.

The obligation of each Lender to honor any Loan Notice (other than pursuant to a Loan Notice requesting only a conversion of Term Loans to the other Type) or to effect any Collateral Substitution, is subject to the following conditions precedent:

(a) (i) on the Closing Date, the Specified Representations shall be true and correct in all material respects (or if qualified by materiality or Material Adverse Effect, in all respects) on and as of the Closing Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (or if qualified by materiality or Material Adverse Effect, in all respects) as of such earlier date, both before and after giving effect to the consummation of the Project Star Acquisition and the incurrence of the Term Loan, and (ii) at any time after the Closing Date, the representations and warranties of the Company and each other Loan Party contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct on and as of the date of such Credit Extension or Collateral Substitution, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that for purposes of this Section 4.03, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01.

(b) (i) on the Closing Date, no Specified Event of Default shall exist or would result from the consummation of the Project Star Acquisition, or the proposed Credit Extension or from the application of the proceeds thereof, and (ii) at any time after the Closing Date, no Default shall exist or would result from such proposed Credit Extension or Collateral Substitution or from the application of the proceeds thereof.

(c) With respect to each Financed Property which is added to the Property Pool by a Collateral Substitution, the Administrative Agent shall have received each of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each dated as of a recent date before the date of such Collateral Substitution) and each in form and substance reasonably satisfactory to the Administrative Agent and (in the case of clauses (i) and (xi)) subject to the approval of Lenders as set forth therein:

(i) a copy of a FIRREA Appraisal acceptable to the Administrative Agent and each Lender (such approval by each Lender not to be unreasonably withheld, conditioned or delayed);

(ii) (x) an original Mortgage properly executed by a Responsible Officer of the signing Loan Party and evidence of the proper recordation of such Mortgage in the appropriate filing office (or delivery of such Mortgage to the applicable title company for recordation), and (y) the Real Estate Support Documents (including originals thereof where required by applicable Law) with respect to such Financed Property;

(iii) copies of environmental reports (including Phase I and if requested by the Lender, Phase II environmental assessments) as the Administrative Agent may reasonably request, in each case (x) prepared by Trammco Environmental Solutions, LLC, or any other environmental expert acceptable to Administrative Agent and (y) dated as of a date within twelve (12) months (or such longer period as may be approved by the Administrative Agent) before the date of addition of such property to the Property Pool;

(iv) a copy of each Lease of such Financed Property, if any, and any sublease or Memorandum of Lease associated therewith, if any;

(v) to the extent the applicable lessee is a Subsidiary and is not already a party to the Subsidiary Guaranty, a fully executed Joinder Agreement executed by the lessee under any Lease of such Financed Property joining such lessee to the Subsidiary Guaranty;

(vi) a favorable opinion of counsel to the applicable Borrower and each applicable Subsidiary (including local counsel in the state where such Financed Property is located), addressed to the Lender, as to such matters concerning the Borrowers owning such Financed Property, any Guarantor leasing such property, and the Loan Documents as the Lender may reasonably request;

(vii) a certificate of a Responsible Officer of the Company in form and detail reasonably satisfactory to the Lender (which may be contained in the applicable Loan Notice) demonstrating that the Collateral Substitution Test shall have been met;

(viii) Uniform Commercial Code search results showing no Liens on the Financed Property other than Mortgage Permitted Liens and those liens acceptable to the Administrative Agent in its sole discretion;

(ix) delivery of Uniform Commercial Code financing statements and fixture filings suitable in form and substance for filing in all places required by applicable Law to perfect the Liens of the Administrative Agent under the Mortgage and other Security Instruments related to such Financed Property as a first priority Lien (subject only to Mortgage Permitted Liens) as to items of Collateral in which a security interest may be perfected by the filing of financing statements or fixture filings, and such other documents and/or evidence of other actions as may be necessary under applicable Law to perfect the Liens of the Administrative Agent under the Mortgage and other Security Instruments related to such Financed Property as a first priority Lien (subject only to Mortgage Permitted Liens) in and to such other Collateral as the Administrative Agent may require;

(x) evidence that all insurance (including flood insurance, if applicable) required to be maintained pursuant to the Loan Documents with respect to such Financed Property has been obtained and is in effect; and endorsements naming the Administrative Agent as an additional insured and loss payee, as the case may be, on all such insurance policies maintained with respect to such Financed Property;

(xi) evidence that such Financed Property is not a Flood Hazard Property or the Administrative Agent has determined that such Financed Property is not subject to Flood Requirements under applicable Law (such evidence or determination subject to the approval of each Lender, not to be unreasonably withheld, conditioned or delayed);

(xii) evidence of payment of all real estate recordation fees and taxes with respect to perfecting the Liens on Collateral;

(xiii) copies of Landlord Waivers, if any, that have been received by the Company or any Subsidiary on or prior to the date of such Collateral Substitution;

(xiv) a completed environmental questionnaire covering such Financed Property;

(xv) with respect to the applicable Borrower associated with such Financed Property and any lessee joining the Subsidiary Guaranty (to the extent not previously delivered):

(A) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of such Borrower or Subsidiary Guarantor, as applicable, as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with the Loan Documents to which such Borrower or Subsidiary Guarantor, as applicable, is a party;

(B) such documents and certifications as the Lender may reasonably require (x) to evidence that each Loan Party is duly organized or formed, and (y) to evidence that such Borrower or Subsidiary Guarantor, as applicable, is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership,

lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and

(C) a certificate of a Responsible Officer of such Loan Party certifying that all consents (including pursuant to any Franchise Agreement or Framework Agreement), licenses and approvals required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, have been acquired and are in full force and effect; and

(xvi) With respect to each Collateral Substitution, (i) the Administrative Agent shall have received a \$7,500.00 collateral substitution fee and (ii) the Administrative Agent shall have determined in its reasonable discretion that no Environmental Issue exists with respect to any Financed Property that is added to the Collateral Pool by such Collateral Substitution.

(d) The applicable Borrower associated with such Financed Property must be a Borrower as of the Closing Date or pursuant to Section 6.14.

(e) Any fees required to be paid on or before the date of the applicable Borrowing or Collateral Substitution shall have been paid.

Each Loan Notice (other than a Loan Notice requesting only a conversion of Term Loans to the other Type) submitted by the Company and each Collateral Substitution shall be deemed to be a representation and warranty that the conditions specified in Sections 4.03(a) and (b) have been satisfied on and as of the date of the applicable Borrowing or Collateral Substitution.

The Company and the Borrowers, jointly and severally, shall pay to the Lender any collateral substitution fees required by Section 4.03(d).

## ARTICLE V. REPRESENTATIONS AND WARRANTIES

Each of the Company and each Borrower represents and warrants to the Administrative Agent and the Lenders that:

### 5.01 Existence, Qualification and Power

. Each Loan Party (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

### 5.02 Authorization; No Contravention

. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries, or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law; except, in the case of clause (b)(i) or (c), to the extent such contravention, conflict or violation would not reasonably be expected to have Material Adverse Effect.

### **5.03 Governmental Authorization; Other Consents**

. No registration with, or consent or approval of, or other action by, any federal, state or other Governmental Authority is or will be required in connection with the execution, delivery and performance of this Agreement or any other Loan Document, the execution and delivery of the Notes or repayment of the Borrowings hereunder.

### **5.04 Binding Effect**

. This Agreement and each of the Loan Documents have been duly executed and delivered by each Loan Party which is a party thereto and constitute legal, valid and binding obligations of each Loan Party party thereto enforceable in accordance with their respective terms, subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium and similar Laws affecting creditors' rights generally and general principles of equity.

### **5.05 Financial Statements; No Material Adverse Effect.**

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (ii) fairly present in all material respects the financial condition of the Company and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein.

(b) The unaudited consolidated balance sheets of the Company and its Subsidiaries dated March 31, 2021, and the related consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of the Company and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

### **5.06 Litigation**

. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Company after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against the Company or any other Loan Party or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) except as specifically disclosed in Schedule 5.06, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

### **5.07 No Default**

. No Loan Party is in default under or with respect to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

### **5.08 Ownership of Property; Liens**

. Except as specifically disclosed on Schedule 5.08 (it being understood and agreed that such Schedule may be updated by the Company after the Effective Date and on or prior to the Closing Date,

subject to the Administrative Agent's approval, such approval not to be unreasonably withheld or delayed), from and after the Closing Date, (a) each of the Company and each other Loan Party has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, and (b) each of the Company and each other Loan Party owns all property necessary in the operation of its business, except in each case for such defects in title or such failure to own or lease property as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The property of the Company and each other Loan Party is subject to no Liens, other than Liens permitted by Section 7.02.

#### **5.09 Environmental Compliance**

. The Company and each other Loan Party has complied in all respects with all Environmental Laws except where the failure to comply could not be expected to have a Material Adverse Effect. Neither the Company nor any other Loan Party has received written notice of any failure so to comply except where the failure to comply could not be expected to have a Material Adverse Effect. Neither the Company nor any other Loan Party manages any hazardous wastes, hazardous substances, hazardous materials, toxic substances or toxic pollutants in a manner that violates any regulations promulgated pursuant to Environmental Laws except for any such violation that could not be expected to have a Material Adverse Effect.

#### **5.10 Insurance**

. The properties of the Company and the other Loan Parties are insured with financially sound and reputable insurance companies not Affiliates of the Company, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Company or the applicable Subsidiary operates.

#### **5.11 Taxes**

. The Company and the other Loan Parties have filed all Federal, state and other material tax returns required to be filed, and have paid, or have made adequate provision for payment of, all Federal and material state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves or other appropriate provisions have been provided in accordance with GAAP. There is no proposed tax assessment against the Company or any other Loan Party that would, if made, have a Material Adverse Effect.

#### **5.12 ERISA Compliance.**

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state laws. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service or, in the case of a Pension Plan that is maintained pursuant to the adoption of a master or prototype or volume submitter document, the sponsor of such master or prototype or volume submitter document has obtained from the Internal Revenue Service a favorable opinion letter stating that the form of such master or prototype or volume submitter document is acceptable for the establishment of a tax-qualified plan under Section 401(a) of the Code. To the best knowledge of the Company, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the best knowledge of the Company, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or

violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) No ERISA Event has occurred that would reasonably be expected to result in a material liability, and neither the Company nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA event that would result in a material liability. Except to the extent the following would not reasonably be expected to have a Material Adverse Effect, (i) the Company and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (ii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher and neither the Company nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date; (iii) neither the Company nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (iv) neither the Company nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (v) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

(d) Neither the Company or any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan other than Pension Plans not otherwise prohibited by this Agreement.

(e) Each Borrower represents and warrants as of the Effective Date that such Borrower is not and will not be using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Term Loans or the Commitments.

### **5.13 Subsidiaries; Addresses; Equity Interests**

. As of the Effective Date, the information set forth in Schedule 5.13 are each Loan Party’s (i) anticipated place of business as of and after the Closing Date, (ii) name, (iii) type of organization and (iv) jurisdiction of organization and each Loan Party is formed or incorporated only in the state shown for it on Schedule 5.13 hereto. Without limitation of the requirements in the Loan Documents to maintain security interests and priorities thereof, each of the Company and each Borrower shall, and shall cause each other Loan Party to, promptly (but in any event within ten (10) Business Days) report to the Administrative Agent any change in any such Person’s name, type of organization, jurisdiction of organization or federal employers identification number.

### **5.14 Margin Regulations; Investment Company Act.**

(a) Neither the Company nor any Borrower is engaged or will engage, principally or as one of its important activities (other than in connection with Restricted Payments constituting share repurchases permitted pursuant to Section 7.10(a)(i)-(iii) or (vii)), in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) None of the Company, any Person Controlling the Company, or any Subsidiary is or is required to be registered as an “investment company” under the Investment Company Act of 1940, as amended.

### **5.15 Disclosure**

(a) Neither this Agreement, the other Loan Documents, nor any other document delivered by or with the knowledge and consent of the Company on behalf of the Company or any other Loan Party in connection with the transactions contemplated hereby and the negotiation of this Agreement or in connection with any Loan Document or included therein contained or contains when furnished any material misstatement of fact or omitted or omits to state any fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; provided that, with respect to projected financial information, the Borrowers represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time prepared, it being understood that projections by their nature are uncertain and no assurance is given that the results reflected in such projections will be achieved.

(b) As of the Effective Date and any date that any Beneficial Ownership Certification is delivered to the Administrative Agent pursuant to Section 6.19, if applicable, the information included in such Beneficial Ownership Certification delivered to the Administrative Agent is true and correct in all respects.

### **5.16 Compliance with Laws**

. Each of the Company and each other Loan Party is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

### **5.17 Intellectual Property; Licenses, Etc**

. The Company and the other Loan Parties own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, "IP Rights") that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person, except to the extent such conflict would not reasonably be expected to result in a Material Adverse Effect. No slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by the Company or any other Loan Party infringes upon any rights held by any other Person in a manner that would reasonably be expected to result in a Material Adverse Effect.

### **5.18 Books and Records**

. Each of the Company and each other Loan Party maintains proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied have been made of all financial transactions and matters involving the assets and business of the Company or such other Loan Party, as the case may be.

### **5.19 Franchise Agreements and Framework Agreements**

. Each of the Franchise Agreements and Framework Agreements is currently in full force and effect, and as of the Closing Date no Loan Party has received any notice of termination with respect to any such agreements; and no Loan Party is aware of any event which with notice, lapse of time, or both would allow any manufacturer which is a party to any of the Franchise Agreements or Framework Agreements to terminate any such agreements. There exists no present condition or state of facts or circumstances in regard to said Franchise Agreements or Framework Agreements, in the aggregate, which could reasonably be expected to have a Material Adverse Effect.



## **5.20 Engaged in Business of Vehicle Sales and Related Businesses**

. Neither the Company nor any Borrower is engaged in any business other than (a) in the case of each Borrower, the business of owning and operating the applicable Financed Property and business ancillary thereto; (b) in the case of the Company and each Borrower which is a dealership, the business of (i) selling Vehicles and business activities that are reasonably related or incidental thereto, including, without limitation, the offering and/or selling of parts and service, including vehicle repair and maintenance services, replacement parts, and collision repair services, and finance and insurance products, including arranging vehicle financing through third parties and aftermarket products, such as extended service contracts, guaranteed asset protection insurance, prepaid maintenance, and credit life and disability insurance and (ii) acquiring, owning, operating and, in some cases, selling dealerships engaged in such businesses (provided that no such insurance products described in clause (b)(i) shall require the Company or any other Loan Party to assume the risk of loss in respect of such policies); and (c) de minimis lawful operations not interfering with the businesses described in clauses (a) and (b) above or the Administrative Agent's or the Lenders' rights with respect to the Financed Properties provided pursuant to the Loan Documents.

## **5.21 Collateral**

. The provisions of each of the Security Instruments are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties, a legal, valid and enforceable perfected security interest in all right, title and interest of each applicable Loan Party in the Collateral described therein, except as otherwise permitted hereunder.

## **5.22 Solvency**

. Both before and after giving effect to the Term Loans hereunder, the Company individually is Solvent, and the Loan Parties taken as a whole are Solvent.

## **5.23 Labor Matters**

. As of the Closing Date, to the Company's and the other Loan Parties' knowledge, there are no material labor disputes to which the Company or any of the other Loan Parties are or are reasonably expected to become a party, including, without limitation, any strikes, lockouts or other disputes relating to such Persons' plants and other facilities.

## **5.24 Taxpayer Identification Number**

. The Company's true and correct U.S. taxpayer identification number is set forth on Schedule 10.02.

## **5.25 OFAC**

. No Borrower, nor any of their respective Subsidiaries, nor, to the knowledge of any Borrower and their respective Subsidiaries (in each case other than the Specified Insurance Subsidiaries), any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity currently the subject of any Sanctions or included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority, nor is any Borrower or any Subsidiary located, organized or resident in a Designated Jurisdiction.

## **5.26 Anti-Corruption Laws**

. Each Borrower and its Subsidiaries (other than the Specified Insurance Subsidiaries) have conducted their businesses in material compliance with the United States Foreign Corrupt Practices Act of 1977 and other similar anti-corruption legislation in other jurisdictions that are applicable to any Borrower or its Subsidiaries (other than the Specified Insurance Subsidiaries) (including, if applicable, the

UK Bribery Act 2010), and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

#### **5.27 Affected Financial Institutions**

. No Loan Party is an Affected Financial Institution.

#### **5.28 Leases**

. Schedule 5.28 is a complete and correct listing of all Leases in effect as of the Effective Date and as anticipated to be in effect as of the Closing Date. Each Material Lease is in full force and effect without amendment or modification from the form or copy delivered to the Administrative Agent except for amendments permitted hereunder; no default by any party exists under any such Lease that could result in termination of such Material Lease, nor has any event occurred which, with the passage of time or the giving of notice, or both, would constitute such a default under any such Material Lease.

#### **5.29 Covered Entities**

. No Loan Party is a Covered Entity.

#### **5.30 Borrower ERISA Status**

. On and as of the Effective Date, each Borrower and each of its Subsidiaries is not and will not be (a) an employee benefit plan subject to Title I of ERISA, (b) a plan or account subject to Section 4975 of the Code; (c) an entity deemed to hold "plan assets" of any such plans or accounts for purposes of ERISA or the Code; or (d) a "governmental plan" within the meaning of ERISA.

### **ARTICLE VI. AFFIRMATIVE COVENANTS**

So long as any Lender shall have any Commitment hereunder, any Term Loan or other Obligation hereunder (other than Obligations consisting of continuing indemnities and other contingent Obligations that, in each case, expressly survive termination of this Agreement and for which no claim has been made against any Loan Party) shall remain unpaid or unsatisfied, the Company shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, and 6.03) cause each other Loan Party to:

#### **6.01 Financial Statements**

. Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent and the Required Lenders (provided that any item in clause (a) or (b) below which is filed with the SEC in accordance with SEC requirements shall be deemed to be satisfactory):

(a) as soon as available, but in any event within ninety (90) days after the end of each fiscal year of the Company (or if earlier, fifteen (15) days after the date required to be filed with the SEC (without giving effect to any extension permitted by the SEC));

(i) an audited consolidated balance sheet of the Company and its Subsidiaries as at the end of such fiscal year, setting forth in comparative form the figures for the previous fiscal year, in reasonable detail and prepared in accordance with GAAP;

(ii) if requested by the Administrative Agent, a consolidating balance sheet of the Company and its Subsidiaries as at the end of such fiscal year, with New Vehicle and Used Vehicle inventories designated, as well as associated lien payoffs, in each case prior to intercompany eliminations (and, upon request of the Administrative Agent, setting forth in comparative form the figures for the previous fiscal year), all in reasonable detail and prepared in accordance with GAAP, and accompanied by a combined balance sheet of the Subsidiaries that operate Ford or Lincoln dealerships as at the end of such fiscal year (and upon request of the Administrative Agent, setting forth in comparative form the figures for the previous fiscal year);

(iii) the related audited consolidated statement of income or operations for such fiscal year setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP;

(iv) if requested by the Administrative Agent, the related consolidating statements of income or operations for such fiscal year (and, upon request of the Administrative Agent, setting forth in comparative form the figures for the previous fiscal year), all in reasonable detail and prepared in accordance with GAAP, and accompanied by combined statements of income and operations of the Subsidiaries that operate Ford or Lincoln dealerships for such fiscal year (and upon request of the Administrative Agent, setting forth in comparative form the figures for the previous fiscal year); and

(v) the related audited consolidated statements of stockholders' equity and cash flows for such fiscal year setting forth in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP;

such consolidated financial statements to be audited and accompanied by (x) a report and opinion of Ernst & Young LLP or any other Registered Public Accounting Firm of nationally recognized standing reasonably acceptable to the Required Lenders, which report and opinion shall be prepared in accordance with audit standards of the Public Company Accounting Oversight Board and applicable Securities Laws and shall not be subject to any "going concern" or like qualification or exception (other than a "going concern" statement, explanatory note or like qualification or exception resulting solely from the Maturity Date under this Agreement occurring within one year from the time such opinion is delivered) or any qualification or exception as to the scope of such audit;

(b) as soon as available, but in any event within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of the Company (or if earlier, five (5) days after the date required to be filed with the SEC (without giving effect to any extension permitted by the SEC)):

(i) an unaudited consolidated balance sheet of the Company and its Subsidiaries as at the end of such fiscal quarter, setting forth in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year, in reasonable detail and prepared in accordance with GAAP;

(ii) if requested by the Administrative Agent, a consolidating balance sheet of the Company and its Subsidiaries as at the end of such fiscal quarter, with New Vehicle and Used Vehicle inventories designated, as well as associated lien payoffs, in each case prior to intercompany eliminations (and, upon the request of the Administrative Agent, setting forth in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year), all in reasonable detail and prepared in accordance with GAAP, and accompanied by a combined balance sheet of the Subsidiaries that operate Ford or Lincoln dealerships as at the end of such fiscal quarter (and upon request of the Administrative Agent, setting forth in comparative form the figures for the previous fiscal quarter);

(iii) the related unaudited consolidated statement of income or operations for the portion of the Company's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding portion of the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP;

(iv) if requested by the Administrative Agent, the related consolidating statements of income or operations for the portion of the Company's fiscal year then ended (and, upon the request of the Administrative Agent, setting forth in comparative form the figures for the corresponding portion of the previous fiscal year), all in reasonable detail and prepared in accordance with GAAP, and accompanied by combined statements of income and operations of the Subsidiaries that operate Ford or Lincoln dealerships for such portion of the fiscal year then ended (and upon request of the Administrative Agent, setting forth in comparative form the figures for the corresponding portion of the previous fiscal year); and

(v) the related unaudited consolidated statements of stockholders' equity and cash flows for such fiscal quarter (and the portion of the Company's fiscal year then ended) setting forth in comparative form the figures for the corresponding fiscal quarter (and portion) of the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP;

such consolidated and consolidating financial statements described in this Section 6.01(b) to be unaudited and certified by a Responsible Officer of the Company as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of the Company and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(c) if requested by the Administrative Agent, as soon as available, but in any event within twenty (20) days after the end of each fiscal quarter (including the fourth quarter of each fiscal year) of the Company quarterly factory form financial statements for each Vehicle Borrower;

As to any information contained in materials furnished pursuant to Section 6.02(f), the Company shall not be separately required to furnish such information under clause (a) or (b) above, but the foregoing shall not be in derogation of the obligation of the Company to furnish the information and materials described in clauses (a) and (b) above at the times specified therein.

## **6.02 Certificates; Other Information**

. Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent:

(a) Concurrently with:

(i) the delivery of the financial statements referred to in Section 6.01(a) and (b), (A) a duly completed Compliance Certificate signed by a Responsible Officer of the Company, including the calculation of the financial covenants set forth in Section 7.11(a) and (b), along with calculations of Restricted Payment availability and usage and the Consolidated Total Leverage Ratio in form and substance reasonably acceptable to the Administrative Agent, and (B) a schedule (which such schedule may be included in the Compliance Certificate delivered with respect to such period) describing the entry of any final, non-appealable judgment or decree against the Company and/or any other Loan Party if the aggregate amount of such judgment or decree exceeds \$7,500,000 (after deducting the amount with respect to which the Company or such other Loan Party is insured and with respect to which the insurer has assumed the defense in writing and has not contested or denied its responsibility for such amount);

(ii) the delivery of the financial statements referred to in Section 6.01(a), financial projections for the 12 months succeeding the date of such financial statements, such projections to be prepared by management of the Company, in form reasonably satisfactory to the Administrative Agent; and

(iii) any event described herein requiring Pro Forma Compliance, to the extent otherwise required under Section 7.04, 7.16 or 7.19, a duly completed Pro Forma Compliance Certificate (including the calculation of the financial covenants set forth in Section 7.11(a) and (b)) signed by a Responsible Officer of the Company;

In addition to other reporting requirements under this Agreement, if calculation of any financial ratio gives pro forma effect to any Material Disposition or Material Acquisition occurring during the relevant period or after the relevant period and on or prior to the date of determination, as described above and if (Y) the aggregate adjustment to Consolidated EBITDAR (as a result of all Material Dispositions and Material Acquisitions) either increases or decreases Consolidated EBITDAR for such period by at least 10% or (Z) the Administrative Agent requests such additional reporting, then (in the case of either clause (Y) or (Z)), the Company will provide additional financial reporting and compliance reporting segregating actual financial line items from pro forma line items for such period in a manner reasonably acceptable to the Administrative Agent.

(b) in the event of any Acquisition, the certificates and information required by Section 7.19;

(c) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Company, and copies of all annual, regular, periodic and special reports and registration statements which the Company may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(d) promptly, and in any event within five Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each material notice or other material correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof;

(e) [reserved];

(f) promptly following any request therefor, provide information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable “know your customer” and anti-money-laundering rules and regulations, including the Patriot Act and the Beneficial Ownership Regulation; and

(g) promptly, such additional information regarding the business, financial or corporate affairs of the Company or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01(a), (b) or (c) or Section 6.02(f) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Company posts such documents, or provides a link thereto on the Company’s website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Company’s behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that, the Company shall notify the Administrative Agent and each Lender (by facsimile or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Company with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Company hereby acknowledges that (a) the Administrative Agent and/or the Arranger will make available to the Lenders materials and/or information provided by or on behalf of the Company hereunder (collectively, “Borrower Materials”) by posting the Borrower Materials on IntraLinks, SyndTrak, ClearPar or another similar electronic system (the “Platform”) and (b) certain of the Lenders (each, a “Public Lender”) may have personnel who do not wish to receive material non-public information with respect to the Company or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons’ securities. The Company hereby agrees that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking Borrower Materials “PUBLIC”, the Company shall be deemed to have authorized the Administrative Agent, the Arranger, and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Company or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information”; and (z) the Administrative Agent and the Arranger shall be entitled to treat any Borrower

Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information".

### 6.03 Notices

. Promptly following any Responsible Officer of the Company having notice or knowledge thereof, notify the Administrative Agent and each Lender:

- (a) of the occurrence of any Default;
- (b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including (i) breach or non-performance of, or any default under, a Contractual Obligation of the Company or any Subsidiary that has resulted or could reasonably be expected to result in a Material Adverse Effect; (ii) any dispute, litigation, investigation, proceeding or suspension between the Company or any Subsidiary and any Governmental Authority which dispute, litigation, investigation, proceeding or suspension arising under this clause (ii) has resulted or could reasonably be expected to result in a Material Adverse Effect; (iii) the commencement of, or any material development in, any litigation or proceeding affecting the Company or any Subsidiary, including pursuant to any applicable Environmental Laws, where the result of such event arising under this clause (iii) has resulted or could reasonably be expected to result in a Material Adverse Effect; or (iv) any report, study, inspection or test that indicates the presence of any Hazardous Materials on or about any Financed Property or any adverse condition relating to any Financed Property, any buildings or any such materials which presence or adverse condition could reasonably be expected to have a Material Adverse Effect;
- (c) of the occurrence of any ERISA Event;
- (d) of any material change in accounting policies or financial reporting practices by the Company or other Loan Party;
- (e) of the incurrence by the Company or any other Loan Party of any Indebtedness (other than the Obligations) having a principal amount in excess of \$50,000,000;
- (f) of any sale of Equity Interests of the Company or any other Loan Party to any Person that is not a Loan Party;
- (g) of any Disposition by the Company or any other Loan Party of any dealership, Franchise Agreement or Framework Agreement to the extent required by [Section 7.04](#);
- (h) of (i) any Franchise Agreement entered into after the Effective Date (and a copy of such Franchise Agreement) by any Loan Party which deviates in any material respect from the Franchise Agreements for the applicable vehicle manufacturer or distributor entered into on or prior to the Effective Date, (ii) any Framework Agreement (and a copy of such Framework Agreement) entered into by any Loan Party after the Effective Date (including the subject matter and term of such Framework Agreement), (iii) the termination or expiration of any Franchise Agreement or Framework Agreement, including the expiration of a Franchise Agreement to which any Loan Party is a party which has expired as described in [Section 8.01\(I\)](#) and has not been renewed within 30 days; (iv) any material amendment or other modification (and a copy of such amendment or modification) of any Framework Agreement to which any Loan Party is a party, and (v) any material adverse change in the relationship between the Company or any other Loan Party and any vehicle manufacturer or distributor, including the written threat of loss of a new vehicle franchise or the written threat of termination of a Franchise Agreement or Framework Agreement;
- (i) of any sale of, Disposition of, or Insurance and Condemnation Event in respect of, in each case, all or any portion of any Financed Property;
- (j) of the occurrence of any Disposition by the Company or any other Loan Party to the extent required pursuant to [Section 7.04](#); and

(k) of (i) any Material Lease (and deliver to the Lender a copy of such Lease) entered into after the Closing Date with respect to any Financed Property, (ii) any amendment or other modification (and deliver to the Lender a copy of such amendment or modification) of any Material Lease with respect to any Financed Property, (iii) the termination or expiration of any Material Lease with respect to any Financed Property and (iv) any material adverse change in the relationship between the applicable Borrower and any lessee under any Material Lease with respect to any Financed Property.

Each notice pursuant to this Section 6.03 shall be accompanied by a statement of a Responsible Officer of the Company setting forth details of the occurrence referred to therein and, if applicable, stating what action the Company has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

#### **6.04 Payment of Obligations**

. Pay and discharge and cause each of the other Loan Parties to pay and discharge, when due, (i) all Federal and material state income or property taxes, and all other material taxes, assessments and governmental charges or levies imposed upon the Company or such other Loan Party, as the case may be, and (ii) all lawful claims for labor, materials and supplies to the extent the failure to pay or discharge such claims for labor, materials and supplies would reasonably be expected to have a Material Adverse Effect, unless and only to the extent, in the case of each of clauses (i) and (ii) above, that the Company or such other Loan Party, as the case may be, is contesting such taxes, assessments and governmental charges, levies or claims in good faith and by appropriate proceedings and the Company or such other Loan Party has set aside on its books such reserves or other appropriate provisions therefor as may be required by GAAP.

#### **6.05 Preservation of Existence, Etc.; Maintenance of Vehicle Title Documentation**

(a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.03 or 7.04; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect; and (d) if applicable, preserve and maintain, in accordance with its standard policies and procedures, all manufacturer statements of origin, certificates of origin, certificates of title or ownership and other customary vehicle title documentation (collectively, the "Vehicle Title Documentation") necessary or desirable in the normal conduct of its business and maintain records evidencing which Vehicles are being used as Demonstrators and Rental Vehicles.

#### **6.06 Maintenance of Properties**

. (a) Maintain, preserve and protect all of its properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) use the standard of care typical in the industry in the operation and maintenance of its facilities.

#### **6.07 Maintenance of Insurance**

. (a) Maintain with financially sound and reputable insurance companies (including any Captive Insurance Company, in accordance with the terms and conditions of this Agreement), insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons and such endorsements as are reasonably

acceptable to the Administrative Agent. The Company and the other Loan Parties will, and will cause each Captive Insurance Company to, preserve and maintain: (i) the licensing and certification of each Captive Insurance Company pursuant to all applicable insurance laws and regulations; (ii) all certifications and authorizations necessary to ensure that each Captive Insurance Company is eligible for all reimbursements available under all applicable insurance laws and regulations; and (iii) all material licenses, permits, authorizations and qualifications required under all applicable insurance laws and regulations in connection with the existence and operation of each Captive Insurance Company. If requested by the Administrative Agent, Borrowers will provide to the Administrative Agent such audited statements of each Captive Insurance Company as requested by the Administrative Agent as of the end of each fiscal year within the sooner to occur of: (i) five days following filing with the applicable regulatory agencies; or (ii) 180 days following the end of such fiscal year. Each Captive Insurance Company shall conduct its insurance business in material compliance with all applicable laws and using sound actuarial principles. The insurance premiums and other expenses charged by any Captive Insurance Company to the Company and its Subsidiaries shall be reasonable and customary and in accordance with all applicable insurance laws and regulations. If requested by the Administrative Agent, the Company will provide the Administrative Agent copies of any outside actuarial reports prepared with respect to any projection, valuation or appraisal of any Captive Insurance Company promptly.

(b) In addition to the insurance referred to above, with respect to each Mortgaged Property, each Borrower will maintain the following policies:

(i) Prior to construction of any improvements on any Mortgaged Property, an “all-risk”, completed value, non-reporting builder’s risk insurance policy or policies that provide coverage similar to the foregoing must be submitted to the Administrative Agent, unless such construction is covered by a policy already provided to the Administrative Agent. This policy must be from a company and in an amount satisfactory to the Administrative Agent, must have a vandalism and malicious mischief endorsement and must be sufficient to avoid the application of any co-insurance provisions, must include provisions for a minimum 30-day advance written notice of any intended policy cancellation or non-renewal, and must designate the Administrative Agent as mortgagee and loss payee in a standard mortgagee endorsement with the following address:

Bank of America, N.A., as Administrative Agent,  
and its successors and assigns, ATIMA  
NC4-105-02-17  
4161 Piedmont Parkway  
Greensboro, NC 27410  
Attention: Monitoring and Compliance

(ii) Each Borrower covenants to maintain or cause to be maintained, by such Borrower and, during the construction of any improvements on any Mortgaged Property, the general contractor, general accident and public liability insurance against all claims for bodily injury, death or property damage occurring upon, in or about any part of such Mortgaged Property. The policies must be from companies and in amounts satisfactory to the Administrative Agent. The contractor’s policy must include worker’s compensation coverage in an amount sufficient to satisfy statutory requirements;

(iii) An “all-risk” property insurance policy must be in effect, and an original certificate from the issuing insurance company evidencing that the policy is in full force and effect must be submitted to the Administrative Agent; provided that such insurance shall include coverage for earthquakes and against wind damage on such terms as the Administrative Agent may reasonably require. The policy must be from a company satisfactory to the Administrative Agent, must be in an amount satisfactory to the Administrative Agent, must eliminate all co-insurance provisions, must include a Replacement Cost and Agreed Amount/Stipulated Value Endorsement (or policy provisions providing similar coverage), must include provisions for a minimum 30-day advance written notice to the Administrative agent or any intended policy cancellation or non-renewal, must eliminate and must designate the Lender as mortgagee and loss payee in a standard mortgagee endorsement, as its interest may appear;



(iv) If, and to the extent that, any Mortgaged Property is or becomes a Flood Hazard Property, the Company shall carry flood insurance with respect to such Mortgaged Property in an amount not less than the maximum amount available under the Flood Disaster Protection Act of 1973 and the regulations issued pursuant thereto, as amended from time to time, in form complying with the “insurance purchase” requirement of that act and otherwise satisfy the Flood Requirements;

(v) Each such liability insurance policy shall name the Administrative Agent and the Lenders as additional insured parties with respect to such Mortgaged Property, and each such casualty insurance policy shall name the Administrative Agent as a lender’s loss payee, and shall provide by way of endorsements, riders or otherwise that (i) proceeds will be payable to the Administrative Agent as its interest may appear; (ii) such insurance policy shall be renewed, if renewal is available, and shall not be canceled and further, shall not be endorsed, altered or reissued to effect a change in coverage in any manner materially adverse to the Administrative Agent or the Lenders, for any reason and to any extent whatsoever unless such insurer shall have first given the Administrative Agent thirty (30) days’ prior written notice thereof; (iii) such insurance policy shall not be impaired by any act or neglect of any Borrower or any use of such Mortgaged Property for purposes more hazardous than are permitted by such policy; and (iv) the Administrative Agent may, but shall not be obliged to, make premium payments to prevent any nonrenewal, cancellation, endorsement, alteration or reissuance and such payments shall be accepted by the insurer to prevent same;

(vi) The Administrative Agent shall be furnished with the original of each such initial policy (or a binder for the issuance of such policy) or a certificate with a duplicate of such original policy (or binder) coincident with the execution of the Mortgage related to such Mortgaged Property and satisfactory evidence of renewal thereof upon expiration of the initial or each preceding renewal policy (provided that the coverage required hereunder remains in effect at all times), together with receipts or other evidence that the premiums thereon have been paid within thirty (30) days following the billing for such renewal, with the original of each renewal policy or a certificate with a duplicate of such renewal policy to follow as soon as available or, in any such case, an appropriate broker’s certificate in respect thereto. Upon request by the Administrative Agent, each Borrower shall furnish to the Administrative Agent a statement certified by such Borrower or a duly authorized officer of such Borrower of the amounts of insurance maintained in compliance with this Section 6.07, a general description of the risks covered by such insurance and of the insurance company or companies which carry such insurance. In addition, each Borrower will promptly comply with any and all requirements of any insurer of any portion of any Mortgaged Property and any and all rules and regulations of any insurance commission or board of fire underwriters having jurisdiction over such Mortgaged Property; and same extent as provided herein with respect to any insurance required to be carried by such Borrower; and

(vii) Without limiting any of the other provisions of this Section 6.07, all losses under, and the proceeds payable under, any policies of insurance that any Borrower may elect to obtain, whether or not required hereunder, which insure, cover or relate to any Mortgaged Property, or any portion thereof, shall be applied in the same manner and to the same extent as provided herein with respect to any insurance required to be carried by such Borrower.

(c) Unless the Company or a Borrower provides the Administrative Agent with evidence of the insurance coverage as required by this Agreement or any other Loan Document, the Administrative Agent (at its discretion) may purchase insurance at the Company’s and the Borrowers’ expense to protect the Administrative Agent’s and the Lenders’ respective interests. This insurance may, but need not, also protect the Company’s and the Borrowers’ interest. If the Collateral becomes damaged, the coverage the Administrative Agent purchases may not pay any claim the Company, any Borrower or any of their Subsidiaries makes or any claim made against the Company, any Borrower or any of their Subsidiaries. The Company or a Borrower, as applicable, may later cancel this coverage by providing evidence that the Company or such Borrower, as applicable, has obtained property coverage elsewhere.

(d) The Company and the Borrowers (jointly and severally) are responsible for the cost of any insurance purchased by the Administrative Agent. The cost of this insurance may be added to the Obligations. If the cost is added to the Obligations, the interest rate provided in Section 2.05(b)(i) shall apply to such added amount. The effective date of coverage may be the date the Company's or the applicable Borrower's prior coverage lapsed or the date the Company or the applicable Borrower failed to provide proof of coverage.

(e) Each of the Company and each Borrower acknowledges that the coverage the Administrative Agent purchases may be considerably more expensive than insurance the Company or such Borrower can obtain on its own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

#### **6.08 Compliance with Laws and Material Contractual Obligations**

. Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees and all Contractual Obligations applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply with such requirement of Law, order, writ, injunction, decree or contractual obligation could not reasonably be expected to have a Material Adverse Effect.

#### **6.09 Books and Records**

. Maintain proper books of record and account, in which full, true and correct in all material respects entries in conformity with GAAP consistently applied shall be made of all material financial transactions and material matters involving the assets and business of the Company or such other Loan Party, as the case may be, including, if applicable, books and records specifying the year, make, model, cost, price, location and vehicle identification number of each Vehicle owned by the Company or such other Loan Party.

#### **6.10 Inspection Rights**

. Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Company; provided, however, that (a) without limiting amounts that may be owed under the Fee Letter or the Syndicated Credit Agreement, while no Event of Default exists the Borrowers shall be responsible for expenses associated with only one such visit or inspection by the Administrative Agent and its contractors per calendar year, and (b) when an Event of Default exists the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at any time or times (all at the expense of the Borrowers) during normal business hours and without advance notice.

#### **6.11 Use of Proceeds**

. Use the proceeds of the Term Loans (a) to finance a portion of the purchase price for the Project Star Acquisition, (b) to pay fees and expenses in connection with this Agreement and the credit facility provided hereunder, and (c) to finance the construction of improvements on the Financed Properties. No Term Loans shall be used for any purpose which would be in contravention of any requirement of Law;

provided that no Credit Extension shall be advanced by any Lender directly to any Subsidiary that is not a Borrower.

#### **6.12 [Intentionally Omitted].**

#### **6.13 [Intentionally Omitted]**

#### 6.14 Additional Subsidiaries

. (a) As soon as practicable (but in any event within ten (10) days or such longer period as the Administrative Agent may agree in its sole discretion) after the acquisition or creation of any Subsidiary which owns, operates a vehicle dealership on or is or will be a lessee of all or any portion of any Financed Property or any existing Subsidiary acquires or commences to own, operate a vehicle dealership on or becomes a lessee of all or any portion of any Financed Property or (b) prior to or simultaneously with any Collateral Substitution, in the event any Subsidiary which owns real property proposed to be a Financed Property in connection with such Collateral Substitution is not an existing Borrower (or any Subsidiary which owns, operates a vehicle dealership on or leases all or any portion of such property, is not an existing Subsidiary Guarantor, as the case may be), cause to be delivered to the Administrative Agent (in addition to any other documents required to be delivered under this Agreement, including pursuant to Section 4.03 or otherwise) each of the following:

(i) a Joinder Agreement duly executed by such Subsidiary with all schedules and information thereto appropriately completed with respect to such Subsidiary becoming a “Borrower” or a “Subsidiary Guarantor”, as applicable;

(ii) UCC financing statements naming such Subsidiary as “Debtor” and naming the Administrative Agent as “Secured Party,” in form, substance and number sufficient in the reasonable opinion of the Administrative Agent and its counsel to be filed in all UCC filing offices in which filing is necessary or advisable to perfect in favor of the Administrative Agent the Liens on the Collateral conferred under such Joinder Agreement and other Security Instruments to the extent such Lien may be perfected by UCC filings;

(iii) an opinion or opinions of counsel to such Subsidiary dated as of the date of delivery of such Joinder Agreements (and other Loan Documents) provided for in this Section 6.14 and addressed to the Administrative Agent, in form and substance acceptable to the Administrative Agent;

(iv) the documents described in Sections 4.01(a)(iii), (iv), and (vi) with respect to such Subsidiary;

(v) evidence satisfactory to the Administrative Agent that, within 3 Business Days of demand therefor by the Administrative Agent, all taxes, filing fees, recording fees related to the perfection of the Liens securing the Obligations have been paid and all reasonable costs and expenses of the Administrative Agent in connection therewith have been paid.

#### 6.15 Further Assurances

. Execute, acknowledge, deliver, and record or file such further instruments, including, without limitation, further security agreements, financing statements, and continuation statements, and do such further acts as may be reasonably necessary, desirable, or proper to carry out more effectively the purposes of this Agreement, and to protect the Liens granted in this Agreement or the Loan Documents to which any Loan Party is a party and against the rights or interests of third Persons, and the Company and the Borrowers (jointly and severally) will pay all reasonable costs connected with any of the foregoing. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, including Section 6.14, no Mortgage shall be executed and delivered to the Administrative Agent, and no Loan Party shall be required to execute or deliver any Mortgage, unless and until the Administrative Agent has received and approved a life of loan flood zone determination with respect to the applicable Financed Property and either (a) such Financed Property is not a Flood Hazard Property or (b) if such Financed Property is a Flood Hazard Property, (i) the Flood Requirements have been satisfied and (ii) each of the following documents has been posted for the Lenders on the Platform or otherwise distributed to the Lenders at least 30 days prior to the execution and delivery of a Mortgage for such Financed Property: (A) a life of loan flood zone determination, (B) notice to the Company of the flood status of such Financed Property, (C) the address of such Financed Property and any other identifying information needed for the purpose of conducting flood searches and (D) a copy of the proposed flood insurance

policy (it being understood that if any Lender has not delivered notice to the Administrative Agent, objecting to any of such items within 30 days, such Lender will be deemed to have approved them for the purposes of this Agreement). Without limiting the generality of the first sentence of this Section, if, after any Mortgage is delivered the related Financed Property becomes a Flood Hazard Property, the Loan Parties shall deliver to the Administrative Agent and the Lenders all Flood Requirements.

#### **6.16 Leases**

. At all times, comply in all material respects with the terms and provisions of the Leases of the Financed Properties, and cause each Material Lease to be kept in full force and effect without termination, amendment or modification, except for (i) any modification or amendment of a Lease which is not materially adverse to the Loan Parties, the Administrative Agent or the Lenders or (ii) renewals or extensions (A) on either substantially the same terms in all material respects as the existing Lease of a Financed Property, or (B) as otherwise approved by the Administrative Agent in writing.

#### **6.17 [Intentionally Omitted]**

#### **6.18 Anti-Corruption Laws**

. Conduct its businesses in material compliance with the United States Foreign Corrupt Practices Act of 1977 and other similar anti-corruption legislation in other jurisdictions that are applicable to any Borrower or its Subsidiaries (including, if applicable, the UK Bribery Act 2010), and maintain policies and procedures designed to promote and achieve compliance with such laws.

#### **6.19 Patriot Act and Beneficial Ownership Regulation**

. Promptly following any request therefor, deliver to the Administrative Agent or any Lender any information and documentation reasonably requested by the Administrative Agent or such Lender for purposes of compliance with applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act and the Beneficial Ownership Regulation. Without limiting the generality of the foregoing, promptly following any request therefor made by the Administrative Agent or any Lender at any time, the Borrowers shall deliver to the Administrative or such Lender a Beneficial Ownership Certification with respect to any Borrower or other Loan Party identified by such Lender in such request.

#### **6.20 Use of Financed Properties as Vehicle Dealerships**

. Ensure that each Financed Property is at all times either (a) used (or under development for use) by a Borrower or Subsidiary Guarantor as a Vehicle dealership, (b) used (or under development for use) by a Borrower or Subsidiary Guarantor as a facility for the sale, repair, service or storage of Vehicles or the provision of related goods or services, (c) used by a Borrower or Subsidiary Guarantor for any purpose ancillary to the uses described in clause (a) or (b) (including, without limitation, executive office space of the Company and/or one or more of its Subsidiaries; provided that any Subsidiary that has leased such office space shall have executed and delivered to the Administrative Agent a Subordination and Attachment), or (d) used for de minimis lawful operations not interfering with the businesses described in clauses (a) and (b) above or the Administrative Agent’s or the Lenders’ rights with respect to the Financed Properties provided pursuant to the Loan Documents.

**6.21 Post-Closing Covenants.** Within one hundred eighty (180) days (or such longer period as the Administrative Agent may agree in its sole discretion) after the Closing Date, the Company shall deliver to the Administrative Agent evidence in form and substance reasonably satisfactory to the Administrative Agent of the issuance of all current Certificates of Occupancy required by applicable Law for each Financed Property set forth on Schedule 6.21.

## ARTICLE VII. NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Term Loan or other Obligation hereunder (other than Obligations consisting of continuing indemnities and other contingent Obligations that, in each case, expressly survive termination of this Agreement and for which no claim has been made against any Loan Party) shall remain unpaid or unsatisfied, the Company shall not, nor shall it permit any Subsidiary (other than the Specified Insurance Subsidiaries and any Designated Escrow Subsidiary) to, directly or indirectly:

### 7.01 Indebtedness

. Incur, create, assume or suffer to exist any Indebtedness, except:

(a) (i) the Obligations under this Agreement and the other Loan Documents and (ii) the Obligations under the Syndicated Credit Agreement and the other Syndicated Loan Documents;

(b) Indebtedness of the Company or any Subsidiary existing at the Effective Date which is reflected in Schedule 7.01(b) hereto (it being understood that such Schedule may be updated by the Company after the Effective Date and on or prior to the Closing Date subject to the Administrative Agent's approval, such approval not to be unreasonably withheld or delayed);

(c) Indebtedness created under leases which, in accordance with GAAP, have been recorded and/or should have been recorded on the books of such Person as capital leases;

(d) unsecured Subordinated Indebtedness;

(e) accounts payable (for the deferred purchase price of property or services) which are from time to time incurred in the ordinary course of business and which (i) are not in excess of (A) ninety (90) days past the due date or (B) if such account payable has no due date, one hundred twenty (120) days past the invoice or billing date or (ii) if outstanding for more than ninety (90) days past such due date (or one hundred twenty (120) days past such invoice or billing date, as applicable), as to which a good faith dispute exists and adequate reserves in conformity with GAAP have been established on the books of such Person;

(f) Permitted Real Estate Debt and Guarantees by the Company or any Subsidiary that is a Syndicated Loan Party;

(g) Indebtedness (other than floorplan Indebtedness) of any Subsidiary of the Company in existence (but not incurred or created in connection with an acquisition) on the date on which such Subsidiary is acquired by any Syndicated Loan Party pursuant to a Permitted Acquisition, provided (i) neither the Company nor any of its other Subsidiaries has any obligation with respect to such Indebtedness, (ii) none of the properties of the Company or any of its other Subsidiaries is bound with respect to such Indebtedness, and (iii) the Company is in full compliance with Section 7.11 hereof before and after such acquisition;

(h) Indebtedness (other than floorplan Indebtedness) secured by Liens upon any property hereafter acquired by the Company or any of its Subsidiaries which Indebtedness is in existence on the date of a Permitted Acquisition (but not incurred or created in connection with such acquisition) at a time when the Company is in full compliance with Section 7.11 hereof before and after such Permitted Acquisition, which Indebtedness is assumed by such acquiring Person simultaneously with such acquisition, which Liens extend only to such property so acquired (and not to any after-acquired property) and with respect to which Indebtedness neither the Company nor any of its Subsidiaries (other than the acquiring Person and its Subsidiaries) has any obligation;

(i) contingent obligations (including Guarantees) of any Indebtedness permitted hereunder;

(j) Indebtedness in respect of obligations (contingent or otherwise) of the Company or any Subsidiary existing or arising under any Swap Contract, provided that (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks or managing costs associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person, and not for purposes of speculation; and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(k) Indebtedness that renews, refinances, refunds or extends any then-existing Indebtedness (other than Permitted FMCC Floorplan Indebtedness or Permitted Service Loaner Indebtedness) of any Loan Party, so long as (A) such renewal, refinancing, refunding or extension does not in any material respect increase the principal amount thereof or expand or add any property subject to any Lien (unless otherwise permitted under this Agreement), (B) if the Indebtedness being refinanced is Subordinated Indebtedness, then such refinancing Indebtedness must also be Subordinated Indebtedness, (C) such renewal, refinancing, refunding, or extension has a final maturity date equal to or greater than the final maturity of, and has a weighted average life to maturity equal to or greater than the weighted average life to maturity of, the Indebtedness being renewed, refinanced, refunded or extended, and (D) without limitation of any other provision herein (including Section 7.16), the terms and conditions (including, without limitation, terms and conditions relating to repurchase, redemption, prepayment and defeasance requirements) of such renewal, refinancing, refunding or extension are not materially more restrictive or burdensome than the Indebtedness being renewed, refinanced, refunded or extended);

(l) Indebtedness of any Syndicated Loan Party secured by Liens upon property which Liens extend only to such property, with respect to which Indebtedness none of the Subsidiaries other than the owner of such encumbered asset has any obligation;

(m) unsecured Indebtedness of the Company and Guarantees of such Indebtedness by Syndicated Loan Parties; provided that (A) the Company and its Subsidiaries shall be in Pro Forma Compliance after giving effect to the incurrence of any such Indebtedness, and (B) not more than \$75,000,000 of such aggregate amount may have a maturity prior to the then applicable Maturity Date (as defined in the Syndicated Credit Agreement) at the time of such incurrence;

(n) Indebtedness consisting of Guarantees by the Company or any of its Subsidiaries in favor of any Person of retail installment contracts or other retail payment obligations in respect of Vehicles sold to a customer; provided that the sum of (A) the aggregate face amount of such guaranteed retail installment contracts and other retail payment obligations described in this Section 7.01(n), plus (B) the aggregate amount of Investments (on a gross basis excluding any reserves) permitted under Section 7.05(j) shall not exceed \$35,000,000 at any time;

(o) Obligations in respect of surety or other bonds or similar instruments entered into in the ordinary course of business; provided that, the aggregate amount of such Indebtedness shall not exceed \$15,000,000 at any time;

(p) Unsecured Indebtedness owed by any Syndicated Loan Party to the Company or to another Syndicated Loan Party;

(q) Indebtedness of any Syndicated Loan Party created under a Qualified Service Loaner Program;

(r) Permitted FMCC Floorplan Indebtedness; and

(s) Indebtedness of the Company under a bridge loan facility with a maturity that is 364 days or less from the date of the incurrence of such Indebtedness.

## 7.02 Liens

(a) Incur, create, assume or permit to exist any Lien on any of its property or assets, whether owned at the date hereof or hereafter acquired, except:

(i) Liens securing payment of the Obligations;

(ii) Liens of the lessor on the property leased pursuant to a lease permitted by Section 7.01(c);

(iii) Liens on property which Liens secure Indebtedness permitted by Section 7.01(l);

(iv) Liens on real property, fixtures, related real property rights and related contracts, and proceeds of the foregoing owned by such Syndicated Loan Party (including, without limitation, insurance proceeds in respect of the foregoing) (in each case, other than the Collateral) securing Permitted Real Estate Debt;

(v) extensions, renewals and replacements of Liens referred to in Section 7.02(a)(i), (ii), (iii), (v), and (vii), provided, that any such extension, renewal or replacement Lien shall be limited to the property or assets covered by the Lien being extended, renewed or replaced and that the Indebtedness secured by any such extension, renewal or replacement lien shall be in an amount not greater than (i) the amount of the Indebtedness secured by the original Lien extended, renewed or replaced, plus (ii) any closing fees, prepayment premiums and reasonable closing costs related to such extension, renewal or replacement;

(vi) Liens (including, without limitation, certain rights of set-off and title retention agreements) in favor of a Manufacturer securing amounts owing in connection with inventory purchased from such Manufacturer, so long as such Liens do not secure Indebtedness, other than (A) Indebtedness of the type described in clause (e) of the definition of "Indebtedness" (and which Indebtedness does not satisfy the requirements of clause (a), (b), (c), (d), (f), (g) or (h) of such definition) and (B) Guarantees of Indebtedness described in clause (A) above;

(vii) Liens on property (including real property) other than the Collateral related to other Indebtedness permitted under Section 7.01(g), or (h);

(viii) Liens on property (including real property) other than the Collateral, provided which Liens secure Swap Contracts permitted under Section 7.01(j);

(ix) Liens securing Permitted Service Loaner Indebtedness (which Liens extend only to Rental Vehicles financed by such Permitted Service Loaner Indebtedness and proceeds of such Vehicles);

(x) Liens securing Permitted FMCC Floorplan Indebtedness permitted by Section 7.01(r);

(xi) Liens for Taxes not past due for more than thirty (30) days or Taxes being contested in good faith and by appropriate proceedings diligently conducted, and as to which reserves or other appropriate provisions as may be required by GAAP are being maintained;

(xii) carriers', warehousemen's, mechanics', materialmen's, landlord's and other like statutory or contractual Liens arising in the ordinary course of business securing obligations which are not overdue for a period of more than thirty (30) days or which are being contested in good faith and by appropriate proceedings, diligently conducted, and as to which such reserves or other appropriate provisions as may be required by GAAP are being maintained;

(xiii) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation;

(xiv) deposits to secure the performance of bids, trade contracts, statutory obligations, and other obligations of a like nature incurred in the ordinary course of business;

(xv) zoning, easements and other restrictions on the use of real property that do not, in the aggregate, materially impair the use of such property;

(xvi) Liens in existence on the date hereof and listed on Schedule 7.02 (it being understood that such Schedule may be updated by the Company after the Effective Date and on or prior to the Closing Date subject to the Administrative Agent's approval, such approval not to be unreasonably withheld or delayed);

(xvii) Liens on assets of any Subsidiary of the Company that is not a Loan Party;

(xviii) purchase options and rights of first refusal in favor of a Manufacturer arising under a Framework Agreement or a Franchise Agreement or the documents executed and delivered in connection therewith;

(xix) Liens on real property, fixtures, related real property rights and related contracts, and proceeds of the foregoing (including, without limitation, insurance proceeds in respect of the foregoing) owned by such Loan Party (in each case, other than property included in the Revolving Borrowing Base), securing Indebtedness permitted by Section 7.01(s); and

(xx) Liens not otherwise permitted hereby securing permitted Indebtedness of the Company and its Subsidiaries so long as, after giving effect to such Indebtedness, the aggregate principal amount of Indebtedness secured by such Liens does not exceed \$35,000,000 at any time; or

(b) Incur, create, assume or permit to exist any Lien on any of the Collateral, except: (i) Liens of the Administrative Agent securing payment of the Obligations; and (ii) Mortgage Permitted Liens.

### **7.03 Consolidations and Mergers**

. Merge, consolidate with or into, or convey, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person (including, in each case, pursuant to a Division), except:

(a) any of its Subsidiaries may merge with the Company, provided that the Company shall be the continuing or surviving Person, or with any one or more such Subsidiaries, provided that (i) if any such transaction shall be between Subsidiaries, one of which is a wholly-owned Subsidiary and one of which is not a wholly-owned Subsidiary, the wholly-owned Subsidiary shall be the continuing or surviving Person, and (ii) in any such transaction between any Subsidiary that is a Subsidiary Guarantor and an entity that is not the Company or a Subsidiary Guarantor, the surviving entity shall be a Subsidiary Guarantor;

(b) any Subsidiary of the Company may sell or transfer all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Company or a wholly-owned Subsidiary; provided, that any such sale or transfer by a Subsidiary Guarantor shall be to the Company or a Subsidiary Guarantor;

(c) any Subsidiary of the Company or the Company may merge or consolidate with another Person (that is not the Company or any of its Subsidiaries) if (x) the Company or such Subsidiary involved in the merger or the consolidation is the surviving Person and (y) immediately prior to and after giving effect to such merger or consolidation, there exists no Event of Default; and



(d) as permitted by Section 7.04(a)(ii) and (a)(v).

#### 7.04 Disposition of Assets

(a) Permit any Disposition (whether in one or a series of transactions) of any property or assets (including Accounts, notes receivable, and/or chattel paper, with or without recourse) or enter into any agreement so to do, except:

(i) Dispositions of Vehicles and other inventory in the ordinary course of business;

(ii) Dispositions of assets, properties or businesses (including the capital stock of Subsidiaries and Franchises) by the Company or any of its Subsidiaries, including Disposition of assets, including Franchises, the Disposition of which the Company determines to be in its best interest; provided that (A) no Event of Default will result from such Disposition, (B) the Company shall be in compliance with Section 7.11, (C) the Total Revolving Outstandings shall not exceed the lesser of the pro forma Revolving Borrowing Base or the Aggregate Revolving Commitments, (D) the Total Used Vehicle Floorplan Outstandings shall not exceed the lesser of the pro forma Used Vehicle Floorplan Borrowing Base or the Aggregate Used Vehicle Floorplan Commitments and (E) the Total New Vehicle Floorplan Outstandings shall not exceed the Aggregate New Vehicle Floorplan Commitments, in each case, after giving effect to such Disposition.

(iii) Dispositions of equipment and other property which is obsolete, worn out or no longer used in or useful to such Person's business, all in the ordinary course of business;

(iv) Dispositions occurring as the result of a casualty event, condemnation or expropriation;

(v) Dispositions in any year of other property, assets (including capital stock of its Subsidiaries and Affiliates) or businesses of the Company not otherwise permitted by clauses (a)(i) through (iv) of this Section 7.04(a); provided that the Net Cash Proceeds (excluding income taxes reasonably estimated to be actually payable within two years of the date of such Disposition as a result of any gain recognized in connection therewith) realized from such Disposition in any applicable year in excess of ten percent (10%) of the tangible assets of the Company as of the beginning of such year are either reinvested within one (1) year in useful assets or used to repay the Obligations, or, with the consent of the Administrative Agent, other senior Indebtedness (without any permanent reduction of any applicable Commitments);

(vi) Dispositions pursuant to Qualified Sale/Leaseback Transactions so long as no Event of Default exists under Section 8.01(b) or (e);

(vii) Dispositions of chattel paper, Accounts arising from the wholesale of parts and accessories, and retail sales contracts, in each case in arms-length transactions for fair value in the ordinary course of business;

(viii) As permitted in Section 7.03; and

(ix) Dispositions of assets (i) by the Company to any Syndicated Loan Party, (ii) by any Subsidiary to the Company or any Syndicated Loan Party, or (iii) by any Subsidiary that is not a Syndicated Loan Party to another Subsidiary that is not a Syndicated Loan Party; provided, however, that if the recipient of such assets would be a Restricted Subsidiary (after giving effect to such Disposition), such recipient shall be a Subsidiary Guarantor;

provided, that in the case of a Disposition pursuant to clause (a)(ii), (iv), (v) or (vi), (i) if the aggregate expected Disposition Proceeds of such Disposition are greater than \$50,000,000, the

Company shall have given notice to the Administrative Agent stating the proposed date of such Disposition and the expected amount of Disposition Proceeds, and (ii) if the aggregate expected Disposition Proceeds of such Disposition are greater than \$75,000,000, (y) the Company shall have furnished to the Administrative Agent pro forma historical financial statements as of the end of the most recently completed fiscal year of the Company and most recent interim fiscal quarter, if applicable, giving effect to such Disposition and all other Dispositions consummated since such fiscal year end, and (z) the Company and its Subsidiaries shall be in Pro Forma Compliance after giving effect to such Disposition, as evidenced by a Pro Forma Compliance Certificate, delivered simultaneously with such pro forma historical financial statements. The Revolving Borrowing Base or Used Vehicle Floorplan Borrowing Base (as applicable) shall not change as a result of such Disposition until such Disposition actually occurs, and the Company and its Subsidiaries shall promptly notify the Administrative Agent when such Disposition occurs or if the date of such Disposition or amount of such Disposition Proceeds has changed or is expected to change.

(b) Permit any Disposition (whether in one or a series of transactions) of any Financed Property or any portion of any Financed Property, or enter into an agreement to do so, except Permitted Financed Property Dispositions.

Notwithstanding anything to the contrary contained in this Section 7.04, neither the Company nor any Subsidiary may make any Disposition (other than, to the extent constituting a Disposition, any Investment in any Designated Escrow Subsidiary permitted under Section 7.05) to any Designated Escrow Subsidiary during the term of this Agreement.

#### **7.05 Investments**

. Make or permit to exist any Investment in any Person, except for:

- (a) Permitted Acquisitions;
- (b) extensions of credit in the nature of Accounts or notes receivable and/or chattel paper arising from the sale of goods and services in the ordinary course of business;
- (c) shares of stock, obligations or other securities received in settlement of claims arising in the ordinary course of business;
- (d) Investments in securities maturing within two (2) years and issued or fully guaranteed or insured by the United States of America or any state or agency thereof;
- (e) Investments in commercial paper maturing within one year from the date of acquisition thereof and having, at such date of acquisition, a credit rating of at least A-1 from S&P and P-1 from Moody's;
- (f) Investments in certificates of deposit, banker's acceptances and time deposits maturing within one year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the Laws of the United States of America or any State thereof that has a combined capital and surplus and undivided profits of not less than \$500,000,000, or any Lender;
- (g) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (d) above and entered into with a financial institution satisfying the criteria described in clause (f) above;
- (h) money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated or invest solely in the assets described in clauses (e) through (g) above and (iii) have portfolio assets of at least \$5,000,000,000; and

(i) Investments to the extent the payment for such Investment is made solely with Equity Interests of the Company;

(j) Investments in seller-financed notes and retail sales contracts in connection with Vehicles; provided that the sum of (i) such Investments described in this Section 7.05(j) (on a gross basis excluding any reserves), plus (ii) the aggregate face amount of Indebtedness permitted under Section 7.01(n) shall not exceed \$35,000,000 at any time;

(k) Investments in (including loans to) the Company or wholly-owned Subsidiaries that are Subsidiary Guarantors;

(l) Investments in (including loans to) Subsidiaries that are not Subsidiary Guarantors (including any equity Investments in any Captive Insurance Company to meet the insurance capital requirements of such Captive Insurance Company to the extent required by applicable law or regulation) in an aggregate amount of not more than \$50,000,000 during the term of this Agreement;

(m) Investments in an aggregate amount which, together with the aggregate amount of Restricted Payments made by the Company pursuant to Section 7.10(a)(i), shall not exceed the 7.10(a)(i) RP Basket Limit at the time of each such Investment, subject to satisfaction of the conditions set forth in the definition of 7.10(a)(i) RP Basket Limit;

(n) without counting against the 7.10(a)(i) RP Basket Limit set forth in Section 7.10(a)(i) below, the Company may make other Investments so long as the Consolidated Total Leverage Ratio is no greater than 3.00 to 1.00 (determined on a pro forma basis after giving effect to such Investment and any other Investment made on such date or at any time after the Applicable Four-Quarter Period);

(o) Investments in fixed or floating rate demand notes issued by original equipment manufacturers (or their captive finance companies), in each case with a credit rating of at least A- from S&P and A3 from Moody's; and

(p) other Investments in an aggregate outstanding amount of not more than \$75,000,000 during the term of this Agreement.

Notwithstanding anything to the contrary contained in this Section 7.05, neither the Company nor any Subsidiary may make any Investment in any Designated Escrow Subsidiary during the term of this Agreement other than Investments otherwise permitted by this Section 7.05 that do not exceed an aggregate amount necessary to pay (i) the administrative expenses of any Designated Escrow Subsidiary in the ordinary course of business and (ii) interest and premiums in respect of the Indebtedness incurred by such Designated Escrow Subsidiary.

#### **7.06 Transactions with Affiliates**

. Enter into any transaction of any kind with any Affiliate of the Company, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to the Company or such Subsidiary as would be obtainable by the Company or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate; provided that the foregoing restriction shall not apply to any transaction between or among the Company or any Subsidiary Guarantor and any other Subsidiary Guarantor or Subsidiary Guarantors.

#### **7.07 Other Agreements**

. Enter into any agreement containing any provision which would be violated or breached by the Company's or such Subsidiary's performance of its Obligations hereunder or under any Loan Document delivered or to be delivered by the Loan Parties hereunder or in connection herewith, except for any such agreement the violation or breach of which would not reasonably be expected to have a Material Adverse Effect.

## 7.08 Fiscal Year; Accounting

. (a) Change its fiscal year or (b) change its method of accounting (other than, in the case of clause (b), immaterial changes and methods and changes authorized or required by GAAP or permitted by Section 1.04(b)).

## 7.09 Pension Plans

. Permit any condition to exist in connection with any Pension Plan which might constitute grounds for the PBGC to institute proceedings to have such Pension Plan terminated or a trustee appointed to administer such Pension Plan, or engage in, or permit to exist or occur any other condition, event or transaction with respect to any Pension Plan which could be expected to have Material Adverse Effect.

## 7.10 Restricted Payments and Distributions.

(a) Restricted Payments. Declare or make any Restricted Payment, except that the Company or any Subsidiary of the Company may pay dividends to the Company (directly or indirectly) or to another Subsidiary Guarantor that is a wholly-owned Subsidiary of the Company at any time, and may also make the following Restricted Payments, provided that, (x) immediately after giving effect to the declaration of any dividend, and the payment of any Restricted Payment, there exists no Default under Section 8.01(a) or (f), and no Default under Section 8.01(a) or (f), or Section 8.03(a) or (g) of the Syndicated Credit Agreement, and (y) after giving pro forma effect to the declaration of any dividend and the payment of any Restricted Payment made pursuant to clause (i), (ii), (iii), (iv) or (vi) below, the Company is in Pro Forma Compliance with the covenants contained in Section 7.11:

(i) the Company may declare and pay cash dividends on its capital stock and may purchase shares of its capital stock; provided that, at the time of any such cash dividend payment or share purchase and after giving effect to such cash dividend payment or share purchase, the sum of (A) the aggregate amount payable or paid in respect of all cash dividends by the Company or shares purchased by the Company (other than shares purchased pursuant to clause (ii) below) on or after June 30, 2019 plus (B) the aggregate amount of Investments made by the Company on or after June 30, 2019 pursuant to Section 7.05(m), shall not exceed the sum of (x) \$642,000,000 plus (or minus if negative) (y) one-half (1/2) of the aggregate Consolidated Net Income of the Company for the period (taken as one accounting period) beginning on July 1, 2019 up to the end of the Company's most recent fiscal quarter for which internal financial statements have been delivered to the Administrative Agent plus (z) 100% of the aggregate Net Cash Proceeds received by the Company after July 1, 2019 as a contribution to its common equity capital or from the issue or sale of Equity Interests of the Company or from the issue or sale of convertible or exchangeable preferred stock or convertible or exchangeable debt securities of the Company that have been converted into or exchanged for such Equity Interests (other than Equity Interests, preferred stock or debt securities sold to a Subsidiary of the Company and other than any contribution by a Subsidiary) (the product described above at any time being referred to herein as the "7.10(a)(i) RP Basket Limit");

(ii) without counting against the 7.10(a)(i) RP Basket Limit set forth in Section 7.10(a)(i) above or restricting the Restricted Payments permitted to be made by Section 7.10(a)(iii), the Company and its Subsidiaries may repurchase, redeem or otherwise acquire or retire for value any Equity Interests of the Company or any such Subsidiaries in an aggregate amount not to exceed \$20,000,000 in any fiscal year;

(iii) without counting against the 7.10(a)(i) RP Basket Limit set forth in Section 7.10(a)(i) above or restricting the Restricted Payments permitted to be made by Section 7.10(a)(ii), the Company may make other Restricted Payments so long as the Consolidated Total Leverage Ratio of the Company and its Restricted Subsidiaries on a consolidated basis is no greater than 3.0 to 1 (determined on a pro forma basis for the most recently ended four full fiscal quarters for which internal financial statements have been delivered to the Administrative Agent prior to such Restricted Payment);

(iv) the Company may declare and pay stock dividends directly or indirectly;

(v) the Company may repurchase Equity Interests deemed to occur upon the exercise of stock options if those Equity Interests represent all or a portion of the exercise price of those options

(vi) the Company may repurchase fractional shares arising out of stock dividends, splits or combinations or business combinations; and

(vii) the Company may pay any dividend or distribution on, or redemption of, Equity Interests pursuant to clause (i) within 60 days after the date of declaration or notice thereof, if at the date of declaration or the giving of notice, the payment would have complied with the provisions of this Agreement.

(b) Distributions. Distribute any funds from any depository account of the Company or a Borrower to any Borrower with respect to which any Event of Default under Section 8.01(e) exists, except to the extent necessary to cure such Event of Default.

Notwithstanding anything to the contrary contained in this Section 7.10, neither the Company nor any Subsidiary may make any dividend or other Restricted Payment to the Designated Escrow Subsidiary during the term of this Agreement.

#### **7.11 Financial Covenants.**

(a) Consolidated Fixed Charge Coverage Ratio. Permit the Consolidated Fixed Charge Coverage Ratio, as of the end of any fiscal quarter, to be less than 1.20 to 1.00.

(b) Consolidated Total Lease Adjusted Leverage Ratio. Permit the Consolidated Total Lease Adjusted Leverage Ratio, as of the end of any fiscal quarter, to be more than 5.75 to 1.00.

#### **7.12 Change in Nature of Business**

. Engage in any material line of business substantially different from those lines of business conducted by the Company and its Subsidiaries on the date hereof or any business substantially related or incidental thereto.

#### **7.13 Use of Proceeds**

. Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

#### **7.14 Burdensome Agreements**

. Enter into any Contractual Obligation (other than this Agreement, any other Loan Document, the Syndicated Credit Agreement or any other Syndicated Loan Document) that

(a) limits the ability (i) of any Subsidiary (other than any Designated Escrow Subsidiary) to pay dividends to any Loan Party or to otherwise transfer property to any Loan Party, (ii) of any Subsidiary Guarantor to Guarantee the Obligations or (iii) of any Borrower to create, incur, assume or suffer to exist Liens on the Collateral in favor of the Administrative Agent for the benefit of the Secured Parties; provided, however, that (W) clause (i) shall not prohibit any Subsidiary from complying with minimum capitalization, working capital, net worth or financial ratios imposed by or pursuant to any Franchise Agreement or Framework Agreement, (X) clauses (i) and (iii) shall not prohibit any negative pledge or restriction on transfer incurred or provided in favor of any holder of secured Indebtedness permitted hereunder (including Permitted Floorplan Indebtedness and Permitted Real Estate Debt) solely

to the extent any such negative pledge or restriction on transfer relates to the property financed by or securing such Indebtedness, (Y) clauses (i) and (iii) shall not prohibit customary restrictions on assignments, subletting or other transfers contained in the documents governing Permitted Sale/Leaseback Transactions or in other leases, licenses and similar agreements entered into in the ordinary course of business (provided that such restrictions are limited to the property subject to such Qualified Sale/Leaseback Transaction, lease, license or other agreement) and (Z) clause (i), (ii) and (iii) shall not prohibit provisions contained in the Indentures on the date hereof or provisions contained in any indenture governing any unsecured senior notes issued by the Company which notes are permitted hereunder, provided that such provisions are no more restrictive on the Company or any Subsidiary than those contained in the Indentures on the date hereof; or

(b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure the Obligations.

#### 7.15 [Reserved]

#### 7.16 Prepayments, etc. of Subordinated Indebtedness

. Voluntarily prepay, redeem, purchase, defease, settle in cash or otherwise satisfy prior to the scheduled maturity thereof in any manner any Subordinated Indebtedness, other than prepayments of Subordinated Indebtedness made in order to effect a refinancing of such Subordinated Indebtedness by other Indebtedness that is permitted under Section 7.01 of this Agreement, (each such prepayment, redemption, purchase, defeasement, settlement or satisfaction referred to as a “Subordinated Indebtedness Prepayment”), except that the Company may make Subordinated Indebtedness Prepayments permitted to be made by the documentation governing such applicable Subordinated Indebtedness so long as (i) (A) both immediately prior to any such Subordinated Indebtedness Prepayment and after giving effect to such Subordinated Indebtedness Prepayment no Default or Event of Default shall exist and (B) the aggregate amount of such Subordinated Indebtedness Prepayments does not exceed \$75,000,000 during any fiscal year or (ii) both immediately prior to any such Subordinated Indebtedness Prepayment and after giving effect to such Subordinated Indebtedness Prepayment: (X) no Default or Event of Default shall exist, (Y) the Company and its Subsidiaries shall be in Pro Forma Compliance, and (Z) the Pro Forma Prepayment Test Amount is equal to or greater than \$150,000,000 on a pro forma basis for the fiscal quarter during which such Subordinated Indebtedness Prepayment is made and each of the next three fiscal quarters (as evidenced, in the case of clauses (Y) and (Z), by a Pro Forma Compliance Certificate and a Prepayment Test Amount Certificate submitted not less than 5 Business Days and not more than 90 days prior to the date of any such Subordinated Indebtedness Prepayment), in which case, such Subordinated Indebtedness Prepayments pursuant to this clause (ii) may be made in an amount of up to the difference (if a positive number) between such Prepayment Test Amount (as measured prior to giving effect to such Subordinated Indebtedness Prepayment) and \$150,000,000.

#### 7.17 [Intentionally Omitted].

**7.18 Perfection of Deposit Accounts.** Without the prior written consent of the Administrative Agent, permit any Person (other than the Revolving Administrative Agent) to obtain any deposit account control agreement (or otherwise perfect any Lien) in respect of any deposit account of the Company or any other Loan Party, other than a deposit account control agreement entered into with the agent, trustee or other secured party in respect of any Indebtedness that is permitted under this Agreement to be secured by a Lien on all or any portion of the Collateral constituting deposit accounts, in each case to the extent that, at all times prior to a Removal Event, the Revolving Administrative Agent is also a party thereto.

**7.19 Acquisitions.** Consummate any Acquisition, unless (i) the Person to be (or whose assets are to be) acquired does not oppose such Acquisition and the material line or lines of business of the Person to be acquired are substantially the same as one or more line or lines of business conducted by the Company and its Subsidiaries, or substantially related or incidental thereto, (ii) no Default shall have occurred and be continuing either immediately prior to or immediately after giving effect to such Acquisition, (iii) [intentionally omitted]; (iv) if the aggregate Cost of Acquisition of such Acquisition is

greater than \$50,000,000, the Company shall have given thirty (30) days' notice to the Administrative Agent stating the proposed date of such Acquisition and the expected Cost of Acquisition, (v) if the aggregate Cost of Acquisition of such Acquisition is greater than \$115,000,000, (y) the Company shall have furnished to the Administrative Agent pro forma historical financial statements as of the end of the most recently completed fiscal year of the Company and most recent interim fiscal quarter, if applicable, giving effect to such Acquisition and all other Acquisitions consummated since such fiscal year end, and (z) the Company and its Subsidiaries shall be in Pro Forma Compliance after giving effect to such Acquisition, as evidenced by a Pro Forma Compliance Certificate, Pro Forma Revolving Borrowing Base Certificate and Pro Forma Used Vehicle Floorplan Borrowing Base Certificate delivered simultaneously with such pro forma historical financial statements, and (vi) the Person acquired shall be a wholly-owned Subsidiary, or be merged into the Company or a wholly-owned Subsidiary, immediately upon consummation of the Acquisition (or if assets are being acquired, the acquiror shall be the Company or a wholly-owned Subsidiary). Nothing in this Section 7.19 shall alter any obligation of the Company or any applicable Subsidiary, to comply with the provisions of Section 6.14, subject to any applicable grace period set forth in Section 6.14.

#### **7.20 Amendments of Organizational Documents**

. Amend its Organizational Documents in a manner that could reasonably be expected to (a) impair the enforceability of any Loan Document in any material respect or the perfection or priority of any Lien created thereunder, (b) impair in any material respect its ability to perform its obligations under the Loan Documents or (c) otherwise have a Material Adverse Effect.

#### **7.21 Sanctions**

. Directly or indirectly, use the proceeds of any Credit Extension, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, to fund any activities of or business with any Person that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as Lender, Arranger, Administrative Agent or otherwise) of Sanctions.

#### **7.22 Anti-Corruption Laws**

. Directly or indirectly use the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anti-corruption legislation in other jurisdictions.

#### **7.23 Leases**

. Permit any Person to occupy, lease or sublease any Financed Property except (a) pursuant to a Lease that is not a Material Lease and (b) pursuant to a Lease of a Financed Property to a Subsidiary that has executed and delivered to the Administrative Agent a Subordination and Attornment agreement in substantially the form of Exhibit H (each a "Subordination and Attornment Agreement") and has joined the Subsidiary Guaranty and provided to the Lender the documents required by Section 6.14.

### **ARTICLE VIII. EVENTS OF DEFAULT AND REMEDIES**

#### **8.01 Events of Default**

. Any of the following shall constitute an Event of Default (each an "Event of Default"):

(a) Non-Payment. Any Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Term Loan, or (ii) within five (5) days after the same becomes due, any interest on any Term Loan, or any fee due hereunder, or (iii) within five (5) days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. The Company or any other Borrower fails to perform or observe any term, covenant or agreement contained in any of Section 6.01, 6.02(a), (b), (c) or (d), 6.03, 6.05 (as it relates to maintenance of existence), 6.10, 6.11, 6.14 or Article VII; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after the giving of written notice to such Loan Party specifying the alleged default; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Company or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default. (i) The Company or any other Loan Party (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts and Indebtedness under the Syndicated Credit Agreement) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event, after giving effect to any amendments or waivers in respect thereof, is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which the Company or any Loan Party is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which the Company or any Loan Party is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by the Company or such other Loan Party as a result thereof is greater than the Threshold Amount; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any of its Restricted Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) The Company or any Restricted Subsidiary becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within thirty (30) days after its issue or levy; or

(h) Judgments. There shall be entered against the Company or any other Loan Party (i) one or more judgments or decrees in excess of the Threshold Amount in the aggregate at any one time outstanding for the Company and all other Loan Parties or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon



such judgment or order, or (B) there is a period of 60 consecutive days during which such judgment is not satisfied and a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect, excluding (in the case of clause (i)) those judgments or decrees for which and to the extent that the Company or any such other Loan Party is insured and with respect to which the insurer has not contested or denied responsibility in writing (subject to usual deductibles); or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan, Multiemployer Plan or Multiple Employer Plan which has resulted or could reasonably be expected to result in liability of the Company under Title IV of ERISA to the Pension Plan, Multiemployer Plan, Multiple Employer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) the Company or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents. (i) Any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or (ii) any Security Instrument shall for any reason (other than pursuant to the terms thereof or as a result of the failure of the Administrative Agent or the Lenders to file UCC financing statements or UCC continuation statements) cease to create a valid security interest in the Collateral purported to be covered thereby or such security interest shall for any reason cease to be a perfected security interest with the priority provided therefor in such Security Instrument subject only to Mortgage Permitted Liens; or

(k) Change of Control. There occurs any Change of Control; or

(l) Default Under Syndicated Credit Agreement. Any "Event of Default" specified in the Syndicated Credit Agreement exists, after giving effect to any waiver or amendment thereof under the Syndicated Credit Agreement (it being agreed that each such "Event of Default" shall survive any termination, cancellation, discharge or replacement of the Syndicated Credit Agreement).

## **8.02 Remedies Upon Event of Default.**

(a) If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(i) declare the Commitment of each Lender to make Term Loans to be terminated, whereupon such commitments and obligation shall be terminated;

(ii) declare the unpaid principal amount of all outstanding Term Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Company; and

(iii) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Company or any Borrower under the Bankruptcy Code of the United States, the obligation of the Lender to make Term Loans shall automatically terminate and the unpaid principal amount of all outstanding Term Loans and all interest and other amounts as aforesaid shall automatically become due and payable without further act of the Administrative Agent or any Lender.

(b) In addition to the foregoing, if any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders take any or all of the following actions:

(i) foreclose upon, take possession of, or otherwise exercise any remedies available to it under any Security Instrument with respect to, any of the Collateral, or

(ii) take any action to perfect or preserve the rights of the Administrative Agent with respect to any Collateral, including filing any appropriate claim or document with respect to any Collateral in any proceeding under any Debtor Relief Law.

### **8.03 Application of Funds**

. After the exercise of remedies provided for in this Article VIII (or after the Term Loans have automatically become immediately due and payable as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall subject to Section 2.12, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal or interest on the Term Loans) payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders (including fees and time charges for attorneys who may be employees of any Lender) and amounts payable under Article III), ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Term Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal on the Term Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Fourth payable to them;

Fifth, to payment of that portion of the Obligations constituting Obligations then owing under Secured Hedge Agreements, ratably among the Hedge Banks in proportion to the respective amounts described in this clause Fifth payable to them;

Sixth, to the payment of all other Obligations of the Loan Parties owing under or in respect of the Loan Documents that are due and payable to the Administrative Agent and the other Secured Parties, or any of them, on such date, ratably based on the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Company or as otherwise required by Law;

provided that, Excluded Swap Obligations with respect to any Loan Party shall not be paid with amounts received from such Loan Party or its assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Obligations otherwise set forth above in this Section.

Notwithstanding the foregoing, Obligations arising under Secured Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, together with such supporting documentation as the Administrative Agent may request, from the applicable Hedge Bank. Each Hedge Bank not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article IX hereof for itself and its Affiliates as if a "Lender" party hereto. Excluded Swap Obligations with respect to any Loan Party shall not be paid with amounts received from such Loan Party, but appropriate adjustments shall be

made with respect to payments from other Loan Parties to preserve the allocation to Obligations otherwise set forth above in this Section.

## ARTICLE IX. ADMINISTRATIVE AGENT

### 9.01 Appointment and Authority

(a) Each of the Lenders hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent and the Lenders, and neither the Company nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article IX and Article XI (including Section 11.04(c)), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

### 9.02 Rights as a Lender

. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Company, any other Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

### 9.03 Exculpatory Provisions

. The Administrative Agent, or the Arranger, as applicable, shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent or the Arranger, as applicable:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) shall not have any duty or responsibility to disclose, and shall not be liable for the failure to disclose, to any Lender, any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Company or any of the other Borrowers or any of their Affiliates, that is communicated to, obtained or in the possession of, the Administrative Agent, Arranger or any of their Related Parties in any capacity, except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent herein.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to the Administrative Agent by the Company or a Lender.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

#### **9.04 Reliance by Administrative Agent**

. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Term Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Term Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Company), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

#### **9.05 Delegation of Duties**

. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its

duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

#### **9.06 Resignation of Administrative Agent**

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders and the Company. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Company, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that in no event shall any such successor Administrative Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Company and such Person remove such Person as Administrative Agent and, in consultation with the Company, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than as provided in Section 3.01(g) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (i) while the retiring or removed Administrative Agent was acting as Administrative Agent and (ii) after such resignation or removal for as long as any of them continues to act in any capacity hereunder or under the other Loan

Documents, including (a) acting as collateral agent or otherwise holding any collateral security on behalf of any of the Lenders and (b) in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.

#### **9.07 Non-Reliance on Administrative Agent, Arranger and Other Lenders**

. Each Lender expressly acknowledges that none of the Administrative Agent nor the Arranger has made any representation or warranty to it, and that no act by the Administrative Agent or the Arranger hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of any Loan Party of any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Administrative Agent or the Arranger to any Lender as to any matter, including whether the Administrative Agent or the Arranger have disclosed material information in their (or their Related Parties') possession. Each Lender represents to the Administrative Agent and the Arranger that it has, independently and without reliance upon the Administrative Agent, the Arranger, any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrowers hereunder. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent, the Arranger, any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Each Lender represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender agrees not to assert a claim in contravention of the foregoing. Each Lender represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities.

#### **9.08 No Other Duties, Etc**

⌊ Anything herein to the contrary notwithstanding, none of the Bookrunner or Arranger listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender hereunder.

#### **9.09 Administrative Agent May File Proofs of Claim; Credit Bidding**

. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Term Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Company or any other Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Term Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all

other amounts due the Lenders and the Administrative Agent under Sections 2.07 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequesteror or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.07 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or any similar Laws in any other jurisdictions to which a Loan Party is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in clauses (a) through (h) of Section 10.01 of this Agreement, (iii) the Administrative Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action, and (iv) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

#### **9.10 Collateral and Guaranty Matters**

. The Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon payment in full of all Obligations (other than contingent indemnification obligations), (ii) that is sold or to be sold as part of or in connection with any sale

permitted hereunder or under any other Loan Document, (iii) to release any Lien on property that is being removed from the Property Pool in connection with a Collateral Removal or a Collateral Substitution permitted hereunder, or (iv) subject to Section 10.01, if approved, authorized or ratified in writing by the Required Lenders;

(b) to release any Subsidiary Guarantor from its obligations under the Subsidiary Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder; and

(c) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.02(a)(ii).

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Subsidiary Guarantor from its obligations under the Subsidiary Guaranty pursuant to this Section 9.10.

The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien purported to be created by the Security Instruments, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

### **9.11 Secured Hedge Agreements**

. Except as otherwise expressly set forth herein or in any Guaranty or any Security Instrument, no Lender or Affiliate of a Lender party to a Related Swap Agreement that obtains the benefit of the provisions of Section 8.03, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Security Instrument shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Related Swap Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Lender or Affiliate of a Lender, as the case may be.

### **9.12 Certain ERISA Matters**

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Company or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Term Loans, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance



company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Term Loans, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Term Loans, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Term Loans, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Term Loans, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Company or any other Loan Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Term Loans, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

### **9.13 Recovery of Erroneous Payments**

. Without limitation of any other provision in this Agreement, if at any time the Administrative Agent makes a payment hereunder in error to any Lender Recipient Party, whether or not in respect of an Obligation due and owing by any Borrower at such time, where such payment is a Rescindable Amount, then in any such event, each Lender Recipient Party receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Lender Recipient Party in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. Each Lender Recipient Party irrevocably waives any and all defenses, including any "discharge for value" (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Lender Recipient Party promptly upon determining that any payment made to such Lender Recipient Party comprised, in whole or in part, a Rescindable Amount.

## **ARTICLE X. MISCELLANEOUS**

### **10.01 Amendments, Etc**

. Subject to Section 3.03(c) and the last paragraph of this Section 10.01, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Company or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Company or the applicable Loan Party, as the case may be, and acknowledged by the

Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

- (a) waive any condition set forth in Section 4.01(a), Section 4.02(a) or Section 4.03(c) without the written consent of each Lender;
- (b) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;
- (c) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Lenders (or any of them) or any scheduled or mandatory reduction of the Aggregate Term Loan Commitments hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby; provided, however, that only the consent of the Required Lenders shall be required to postpone any date fixed for any mandatory prepayment of principal of any Term Loan or interest accrued on such principal amount;
- (d) reduce the principal of, or the rate of interest specified herein on, any Term Loan, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby; provided, however, that only the consent of the Required Lenders shall be necessary (i) to amend the definition of “Default Rate” or to waive any obligation of any Borrower to pay interest at the Default Rate or (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Term Loan or to reduce any fee payable hereunder;
- (e) change Section 2.10 or Section 8.03 in a manner that would alter the pro rata payments or pro rata sharing of payments required thereby without the written consent of each Lender;
- (f) change any provision of this Section or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;
- (g) release the Company from the Company Guaranty or release all or substantially all of the value of the Subsidiary Guaranty without the written consent of each Lender;
- (h) release all or substantially all of the Collateral in any transaction or series of related transactions, except as specifically required by the Loan Documents, without the written consent of each Lender;
- (i) except as expressly permitted by Section 9.10 and otherwise as expressly permitted by this Agreement, (i) subordinate, or have the effect of subordinating, the Obligations hereunder to any other Indebtedness or other obligation or (ii) subordinate, or have the effect of subordinating, the Liens securing the Obligations to Liens securing any other Indebtedness or other obligation, without the prior written consent of each Lender directly affected thereby;

and, provided further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (ii) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended or the maturity of any of its Term Loans may not be extended, the rate of interest on any of its Term Loans may not be reduced and the principal amount of any of its Term Loans may not be forgiven, in each case without the consent of such Defaulting Lender

and (y) any waiver, amendment, consent or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding anything to the contrary contained in this Section 10.01, (y) this Agreement may be amended and restated without the consent of any Lender (but with the consent of the Company and Administrative Agent) if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Commitments of such Lender shall have terminated, such Lender shall have no other commitment or other obligation hereunder and shall have been paid in full all principal, interest and other amounts owing to it or accrued for its account under this Agreement, and (z) Administrative Agent and the Company may amend or modify this Agreement and any other Loan Document to (1) cure any ambiguity, omission, defect or inconsistency therein or (2) grant a new Lien for the benefit of the Secured Parties, extend an existing Lien over additional property for the benefit of the Secured Parties or join additional Persons as Credit Parties.

Notwithstanding any provision herein to the contrary, if the Administrative Agent and the Company acting together identify any ambiguity, omission, mistake, typographical error or other defect in any provision of this Agreement or any other Loan Document (including the schedules and exhibits thereto), then the Administrative Agent and the Company shall be permitted to amend, modify or supplement such provision to cure such ambiguity, omission, mistake, typographical error or other defect, and such amendment shall become effective without any further action or consent of any other party to this Agreement.

#### **10.02 Notices; Effectiveness; Electronic Communication.**

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or electronic mail as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Company, a Borrower, any other Loan Party or the Administrative Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Company).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail, FpML messaging and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Company may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement) and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Company, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Company's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to the Company, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Company (for itself and on behalf of the other Borrowers) and the Administrative Agent, may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the Company or the Administrative Agent, as applicable. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Company or its securities for purposes of United States Federal or state securities laws.

(e) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic or electronic Loan Notices) purportedly given by or on behalf of any Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Company and each Borrower shall indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Company or any Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

### 10.03 No Waiver; Cumulative Remedies; Enforcement

. No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.10), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 2.10, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

### 10.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Company and each Borrower (jointly and severally) shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of one law firm acting as outside counsel for the Administrative Agent and one law firm acting as local counsel in each jurisdiction where necessary, the costs of appraisals, environmental reports and reviews thereof, title work, recording fees, recording taxes and the costs of any other Real Estate Support Documents), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all out-of-pocket expenses incurred by the Administrative Agent or any Lender (including the fees, charges and disbursements of any counsel for the Administrative Agent or any Lender), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Term Loans made hereunder, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Term Loans.

(b) Indemnification by the Borrowers. The Company and each Borrower (jointly and severally) shall indemnify the Administrative Agent (and any sub-agent thereof), the Arranger and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (but limited, in the case of legal fees and expenses, to the reasonable and documented fees, disbursements and other charges of (i) one counsel for the Administrative Agent and Bank of America, as Arranger, taken together, (ii) one counsel for the Lenders, taken together, (iii) if the Administrative Agent deems it necessary, one local counsel in each relevant jurisdiction, and (iv) in the case of any actual or perceived conflict of interest with respect to any of the counsel identified in clauses (i) through (iii) above, one additional counsel for each group of affected persons similarly situated, taken as a whole (which in the case of clause (iii) will, if the Administrative Agent deems it necessary, allow for up to one additional counsel in each relevant jurisdiction)), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Company or any other Loan Party arising out of, in

connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Commitment or Term Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Company, any Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Company, any Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Company or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee, (y) result from a claim brought by the Company or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Company or such other Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction, or (z) arise out of a dispute solely between or among Indemnitees that does not involve an act or omission by any Loan Party or any Loan Party's Affiliates, other than any action, suit, proceeding or claim against any Indemnitee in its capacity or in fulfilling its role as an agent, arranger or similar role under hereunder or under any other Loan Document. Without limiting the provisions of Section 3.01(c), this Section 10.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Company or any Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lenders' Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.10(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, neither the Company nor any Borrower shall assert, and each of the Company and each Borrower hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Term Loan or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section and the indemnity provisions of Section 10.02(e) shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Term Loan Commitments and the repayment, satisfaction or discharge of all the other Obligations.

#### 10.05 Payments Set Aside

. To the extent that any payment by or on behalf of the Company or any Borrower is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

#### 10.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Company nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Term Loans at the time owing to it (such Lender's portion of Term Loans, Commitments and risk participations being referred to in this Section 10.06 as its "Applicable Share"); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Term Loans at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Term Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Term Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified

in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000 unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Company otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Term Loans and Commitments assigned; and each assignment (whether partial or total) shall be allocated on a pro rata basis among the assigning Lender's Term Loans and Commitments under each of the Facilities.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Company (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Company shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof; and

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Company or any of the Company's Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or (C) any competitor of the Company which has been identified in writing by the Company in a document that has been posted on a site maintained by the Administrative Agent and available to all of the Lenders prior to assignor's and assignee's execution of the applicable Assignment and Assumption (any such Person, a "Competitor"), or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural person (or a holding company investment vehicle or trust for, or owned and operated for the primary benefit of a natural person). The Administrative Agent shall have no responsibility for determining whether any assignee is a Competitor.

(vi) Representation Regarding Competitors. The Assignment and Assumption shall contain a representation and warranty (A) from the assignor that the assignee is not a Competitor and (B) from the assignee that it is not primarily engaged in the business of owning or operating automobile dealerships.

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient,



upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Company and the Administrative Agent, the applicable pro rata share of Term Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Term Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, each Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Company (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Term Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Company, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by each of the Borrowers and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Company, any Borrower or the Administrative Agent, sell participations to any Person (other than (w) a Defaulting Lender, (x) a natural person or a holding company investment vehicle or trust for, or owned and operated for the primary benefit of a natural person, (y) the Company or any of the Company's Affiliates or Subsidiaries or (z) any competitor of the Company which has been identified in writing by the Company in a document that has been made available to all of the Lenders) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Term Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Company, the Borrowers, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 10.04(c) without regard to the existence of any participation. The Administrative Agent shall have no responsibility for determining whether any Participant is a competitor.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement and shall contain a representation and warranty (A) from the Lender selling the participation that the prospective participant is not a Competitor and (B) from the prospective participant that it is not primarily engaged in the business of owning or operating automobile dealerships; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, the Company agrees that each Participant shall be entitled to the benefits of Sections 3.01 and 3.04 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section (it being understood that the documentation required under Section 3.01(e) shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 3.05 and 10.13 as if it were an assignee under subsection (b) of this Section and (B) shall not be entitled to receive any greater payment under Sections 3.01 or 3.04, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrowers' request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 3.05 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.10 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Term Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Company's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Company is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Company, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

#### **10.07 Treatment of Certain Information; Confidentiality**

. The Administrative Agent and each of the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates, its auditors and its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have

jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its Related Parties) to any swap or derivative transaction relating to the Company and its obligations, (g) on a confidential basis to (i) any rating agency in connection with rating the Company or its Subsidiaries or the credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (h) with the consent of the Company or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Company. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments. For purposes of this Section, "Information" means all information received from the Company or any Subsidiary relating to Company or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Company or any Subsidiary, provided that, in the case of information received from the Company or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

The Administrative Agent and each of the Lenders acknowledges that (a) the Information may include material non-public information concerning the Company or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

#### **10.08 Right of Setoff**

. If an Event of Default shall have occurred and be continuing, each Lender, and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Company or any Borrower against any and all of the obligations of the Company or any Borrower, as applicable, now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Company or such Borrower may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or its Affiliates may have. Each Lender agrees to notify the Company and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

### **10.09 Interest Rate Limitation**

. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Term Loans or, if it exceeds such unpaid principal, refunded to the Company. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

### **10.10 Counterparts; Integration; Effectiveness**

. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement.

### **10.11 Survival of Representations and Warranties**

. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Term Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

### **10.12 Severability**

. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

### **10.13 Replacement of Lenders**

. If the Company or any other Borrower is entitled to replace a Lender pursuant to the provisions of Section 3.05, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Company may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions

contained in, and consents required by, Section 10.06), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.04) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

- (a) the Company shall have paid to the Administrative Agent the assignment fee specified in Section 10.06(b);
- (b) such Lender shall have received payment of an amount equal to 100% of the outstanding principal of its Term Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Company (in the case of all other amounts);
- (c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;
- (d) such assignment does not conflict with applicable Laws; and
- (e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Company to require such assignment and delegation cease to apply.

Each party hereto agrees that (a) an assignment required pursuant to this Section 10.13 may be effected pursuant to an Assignment and Assumption executed by the Company, the Administrative Agent and the assignee and (b) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to and be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided, further that any such documents shall be without recourse to or warranty by the parties thereto.

Notwithstanding anything in this Section 10.13 to the contrary, the Lender that acts as the Administrative Agent may not be replaced hereunder except in accordance with the terms of Section 9.06.

#### **10.14 Governing Law; Jurisdiction; Etc.**

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. THE COMPANY AND EACH BORROWER IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO

IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE COMPANY OR ANY BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. THE COMPANY AND EACH BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

#### **10.15 Waiver of Jury Trial**

. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

#### **10.16 No Advisory or Fiduciary Responsibility**

. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Company and each other Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the Arranger are arm's-length commercial transactions between the Borrowers and their respective Affiliates, on the one hand, and the Administrative Agent and the Arranger, on the other hand, (B) each of the Company and the other Borrowers has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each of the Company and the other Borrowers is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent and the Arranger each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Company, any other Borrower or any of their respective Affiliates, or any other Person and (B) neither

the Administrative Agent nor the Arranger has any obligation to the Company, any other Borrower or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent and the Arranger and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company and the other Borrowers and their respective Affiliates, and neither the Administrative Agent nor the Arranger has any obligation to disclose any of such interests to the Company, any other Borrower or any of their respective Affiliates. To the fullest extent permitted by law, each of the Company and the other Borrowers hereby waives and releases any claims that it may have against the Administrative Agent and the Arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

#### **10.17 Electronic Execution; Electronic Records; Counterparts**

. This Agreement, any Loan Document and any other Communication, including Communications required to be in writing (including without limitation Assignment and Assumptions, amendments or other modification modifications, Loan Notices, waivers and consents), may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each of the Loan Parties and each of the Administrative Agent, and the Lender Parties agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on such Person to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of such Person enforceable against such Person in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Administrative Agent and each of the Lender Parties may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record ("Electronic Copy"), which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, the Administrative Agent is not under any obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by such Person pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the Administrative Agent has agreed to accept such Electronic Signature, the Administrative Agent and each of the Lender Parties shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Loan Party and/or any Lender Party without further verification and (b) upon the request of the Administrative Agent or any Lender Party, any Electronic Signature shall be promptly followed by such manually executed counterpart. For purposes hereof, "Electronic Record" and "Electronic Signature" shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document (including, for the avoidance of doubt, in connection with the Administrative Agent's reliance on any Electronic Signature transmitted by telecopy, emailed .pdf or any other electronic means). The Administrative Agent shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any Communication (which writing may be a fax, any electronic message, Internet or intranet website posting or other distribution or signed using an Electronic Signature) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof).

Each of the Loan Parties and each Lender Party hereby waives (i) any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement or any other Loan Document based solely on the lack of paper original copies of this Agreement and/or such other Loan Document, and (ii)

waives any claim against the Administrative Agent, each Lender Party and each Related Party for any liabilities arising solely from the Administrative Agent's and/or any Lender Party's reliance on or use of Electronic Signatures, including any liabilities arising as a result of the failure of the Loan Parties to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

#### **10.18 USA Patriot Act**

. Each Lender that is subject to the Patriot Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Company and the other Borrowers that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), it is required to obtain, verify and record information that identifies the Company and the other Borrowers, which information includes the name and address of the Company and the other Borrowers and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Company and each other Borrower in accordance with the Patriot Act. The Company and each other Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

#### **10.19 Designated Senior Debt**

. Each party acknowledges and agrees that the Indebtedness under the Loan Documents is "Designated Senior Debt" (or any similar term) under, and as defined in any agreements evidencing Subordinated Indebtedness.

#### **10.20 Keepwell**

. Each Borrower that is a Qualified ECP Guarantor at the time the joint and several liability of any Specified Loan Party, or any Guaranty or the grant of a Lien under the Loan Documents, in each case, by any Specified Loan Party, becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Borrower's obligations and undertakings under this Article X voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Borrower under this Section shall remain in full force and effect until the Obligations have been indefeasibly paid and performed in full. Each Borrower intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support or other agreement" for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

#### **10.21 Acknowledgement and Consent to Bail-In of Affected Financial Institutions**

. Solely to the extent any Lender that is an Affected Financial Institution is a party to this Agreement and notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:



(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

## 10.22 Acknowledgement Regarding Any Supported QFCs

. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, “QFC Credit Support”, and each such QFC, a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 10.22, the following terms have the following meanings:

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Covered Entity” means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

*[Signature pages follow.]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**COMPANY:**

**ASBURY AUTOMOTIVE GROUP, INC.**

By: \_\_\_\_\_  
Typed Name: Karen Reid  
Typed Title: Vice President, Corporate FP&A  
and Treasurer

**BORROWERS:**

**ASBURY DALLAS MB, LLC  
ASBURY FORT WORTH MB, LLC  
ASBURY ARLINGTON MB, LLC  
ASBURY DALLAS VOL, LLC  
ASBURY TX AUCTION, LLC  
ASBURY AUTOMOTIVE TEXAS L.L.C.**

By: \_\_\_\_\_  
Typed Name: Karen Reid  
Typed Title: Treasurer

Asbury Automotive Group, Inc.  
REAL ESTATE CREDIT AGREEMENT  
Signature Page

**BANK OF AMERICA, N.A.,**  
as Administrative Agent

By: \_\_\_\_\_  
Typed Name: \_\_\_\_\_  
Typed Title: \_\_\_\_\_

**BANK OF AMERICA, N.A.,**  
as a Lender

By: \_\_\_\_\_  
Typed Name: \_\_\_\_\_  
Typed Title: \_\_\_\_\_

Asbury Automotive Group, Inc.  
REAL ESTATE CREDIT AGREEMENT  
Signature Page

**Financed Properties**

*Schedule 1.1(C) - Page 1*

| Owner/ Borrower                | Dealership                          | Address                               | Tax Parcel No.    | Adjusted FIRREA Appraisal Value | Portion of Term Loan Attributable to Property |
|--------------------------------|-------------------------------------|---------------------------------------|-------------------|---------------------------------|---|
| Asbury Dallas MB, LLC          | Mercedes-Benz of Dallas             | 6120 Peeler St., Dallas, TX           | 00000429781000100 | \$31,000,000                    | \$28,560,000                                  |
|                                |                                     | 6219 Peeler St., Dallas, TX           | 00571700010030000 |                                 |   |
|                                |                                     | 6214 Cedar Springs Rd., Dallas, TX    | 005717000A0030000 |                                 |   |
|                                |                                     | 3333 Atwell St., Dallas, TX           | 00000429697000000 |                                 |   |
|                                |                                     | 3316 Atwell St., Dallas, TX           | 00000429727000000 |                                 |   |
| Asbury Automotive Texas L.L.C. | Mercedes-Benz and Porsche of Dallas | 6113 and 6107 Lemmon Ave., Dallas, TX | 005715000C0010000 | \$80,000,000                    | \$68,000,000                                  |
| Asbury Fort Worth MB, LLC      | Mercedes-Benz of Fort Worth         | 5601 Bryant Irvin Rd., Fort Worth, TX | 40734919          | \$37,000,000                    | \$31,450,000                                  |
|                                |                                     | 5751 Bryant Irvin Rd., Fort Worth, TX | 41718879          |                                 |   |
|                                |                                     | 5760 Bryant Irvin Rd., Fort Worth, TX | 41019741          |                                 |   |
| Asbury Arlington MB, LLC       | Mercedes-Benz of Arlington          | 4201 Beltway Pl., Arlington, TX       | 41717406          | \$33,000,000                    | \$28,050,000                                  |
| Asbury Dallas VOL, LLC         | Volvo Dallas                        | 3515 Inwood Rd., Dallas, TX           | 00569600020020000 | \$12,700,000                    | \$10,795,000                                  |
|                                |                                     | 6262 Cedar Springs Rd., Dallas, TX    | 00000429757000000 |                                 |   |
| Asbury TX Auction, LLC         | Park Place Auto Auction             | 4422 W. Plano Pkwy., Plano, TX        | 2674011           | \$12,800,000                    | \$10,880,000                                  |
|                                |                                     | 4428 W. Plano Pkwy., Plano, TX        | 2734260           |                                 |   |
| Asbury Automotive Texas L.L.C. | Corporate                           | 350 Phelps Dr., Irving, TX            | 32257630000000000 | \$7,800,000                     | \$6,630,000                                   |



**SEVERANCE PAY AGREEMENT  
FOR KEY EMPLOYEE**

This Agreement is entered into as of July 28, 2022 (the "Effective Date") between Asbury Automotive Group, Inc. ("Asbury") and Daniel Clara ("Executive").

IN CONSIDERATION of the promises and mutual covenants and agreements contained herein, the Asbury and Executive agree as follows:

**1. Severance Pay Arrangement**

If a Termination (as defined in Section 2 below) of Executive's employment occurs at any time during Executive's employment, Asbury will pay Executive 12 months of Executive's base salary as of the date of Termination (hereinafter such pay shall be referred to as "Severance Pay"). The Severance Pay will be subject to required withholding and will be made by Asbury to Executive monthly over the course of 12 months on the regular payroll dates beginning on the first regular payroll date after the effective date of the release referenced in Section B below that Executive executes.

In addition to the payment of Severance Pay, if a Termination (as defined in Section 2 below) of Executive's employment occurs at any time during Executive's employment with Asbury, to the extent that Executive participates in a bonus compensation plan at the date of Termination, Asbury shall pay Executive a pro rata portion of that bonus for the year of the Termination equal to the amount of the bonus that Executive would have received if Executive's employment had not been terminated during such year, multiplied by the percentage of such year that has expired through the date of Termination. Such bonus shall be paid at such time as bonuses are paid under the bonus compensation plan to Asbury's other employees whose employment was not terminated in such year.

Asbury further agrees that, if Executive, upon a Termination (as defined in Section 2 below) of Executive's employment occurs at any time during Executive's employment with Asbury, timely and properly elects COBRA for any medical, dental and vision benefit plans in which Executive was participating immediately prior to the end of Executive's employment with Asbury, Asbury shall continue to pay its portion of the monthly premium for those COBRA-covered medical, dental and vision benefit plans for a period of 12 months after the last day of Executive's employment with Asbury. Notwithstanding the above, if Executive obtains other employment (prior to the end of the 12 month COBRA reimbursement period) under which Executive is eligible to be covered by benefits equal to the benefits in his COBRA-elected plans,

Asbury's obligation to reimburse Executive ceases upon Executive's eligibility for such equal benefits.

Notwithstanding anything herein to the contrary, if Executive is determined to be a "specified employee" within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended the ("Code") and if one or more of the payments or benefits to be received by Executive pursuant to this Agreement would be considered deferred compensation subject to Section 409A of the Code, then no such payment shall be made or benefit provided until six (6) months following Executive's date of Termination.

## **2. Termination Triggering Severance Pay**

A "Termination" triggering the Severance Pay set forth above in Section 1 is defined as a termination of Executive's employment with Asbury: (1) by Asbury without "cause", or (2) by Executive because of (x) a material change in the geographic location at which the Executive must perform Executive's services (which shall in no event include a relocation of Executive's current principal place of business to a location less than 50 miles away), (y) a material diminution in Executive's base compensation, or (z) a material diminution in Executive's authority, duties, or responsibilities. For avoidance of doubt, a "Termination" shall not include a termination of Executive's employment by Asbury for "cause" or due to Executive's, death, disability, retirement or voluntary resignation.

For the purposes of this Agreement, the definition of "cause" is: (a) Executive's gross negligence or serious misconduct (including, without limitation, any criminal, fraudulent or dishonest conduct) that is or may be injurious to Asbury; or (b) Executive's being convicted of, or entering a plea of nolo contendere to, any crime that constitutes a felony or involves moral turpitude; or (c) Executive's breach of Sections 3, 4 or 5 below; or (d) Executive's willful and continued failure to perform Executive's duties on behalf of Asbury; or (e) Executive's material breach of a written policy of Asbury. For purposes of this Agreement, the definition of "disability" is a physical or mental disability or infirmity that prevents the performance by Executive of his duties lasting (or likely to last, based on competent medical evidence presented to Asbury) for a continuous period of six months or longer.

## **3. Confidential Information and Nondisclosure Provision**

As a condition to the receipt of the Severance Pay and benefits described in Section 1 above, during and after employment with Asbury, Executive shall agree not to disclose to any person (other than to an employee or director of Asbury, or to Asbury's attorneys, accountants and other advisors or except as may be required by law) and not use to compete with Asbury any confidential or proprietary information, knowledge or data that is not in the public domain that was obtained by Executive while employed by Asbury regarding Asbury or any products, improvements, customers, methods of distribution, sales, prices, profits, costs, contracts, suppliers, business prospects, business methods, techniques, research, trade secrets or know-how of Asbury (collectively, "Confidential Information"). In the event that Executive's employment with Asbury ends for any reason, Executive will deliver to Asbury on or before the Executive's

last day of employment all documents and data of any nature (whether in tangible or electronic form) pertaining to Executive's work with Asbury and will not take any documents or data or any reproduction, or any documents containing or pertaining to any Confidential Information. Executive agrees that in the event of a breach by Executive of this provision, Asbury shall be entitled to inform all potential or new employers of such breach and to cease payments and benefits that would otherwise be made pursuant to Section 1 above, as well as to obtain injunctive relief and damages, including reasonable attorneys fees, and which may include recovery of amounts paid to Executive under this Agreement.

#### **4. Non-Solicitation/Non-Hire of Employees**

Executive agrees that, during his employment at Asbury and for a 12-month period after the end of his employment with Asbury for any reason, he will not, directly or indirectly, solicit, recruit or hire any employee of Asbury (or any person who was an employee of Asbury during the 12 month period preceding the last day of Executive's employment with Asbury) or encourage any such employee to terminate employment with Asbury.

#### **5. Covenant Not to Compete**

Executive agrees that, during his employment at Asbury and for a 12-month period after the end of his employment with Asbury for any reason, he will not (except on behalf of or with the prior written consent of Asbury, which consent may be withheld in Asbury's sole discretion):

(a) provide services of a leadership, management, executive, operational, or advisory capacity and/or participate in the ownership of or provide financial backing to an automotive dealership that is located within a fifty-mile radius of any address set forth on Exhibit A (the "Area");

(b) provide senior/corporate level leadership, executive, operational, or advisory services to any corporate competitor of Asbury who owns or operates one or more automotive dealerships within the Area; and

(c) provide services of a leadership, management, executive, operational or advisory capacity for anyone or any business whose focus is buying, conglomerating, or otherwise acquiring one or more automotive dealerships that are located within the Area.

For purposes of this Section 5, Executive acknowledges and agrees that Asbury conducts business in the Area and that the Area is a reasonable geographic limitation.

Notwithstanding anything to the contrary contained in this Agreement, Asbury hereby agrees that the foregoing covenant shall not be deemed breached as a result of the passive ownership by Executive of: (i) less than an aggregate of 5% of any class of stock of a business that competes with Asbury; or (ii) less than an aggregate of 10% in value of any instrument of indebtedness of a business that competes with Asbury. Asbury further agrees that nothing in this Section 5 prohibits Executive from accepting employment from, and performing services for,



businesses engaged in the finance industry, and businesses engaged in the manufacturing and/or sale of automobile parts or the provision of automotive service, provided such businesses do not also engage in the retail of automobiles within the Area. By way of example, nothing in this Section 5 would prohibit Executive from working with such businesses as American General Finance, NAPA Auto Parts or Goodyear.

Within one day of the end of Executive's employment with Asbury for any reason, Executive agrees to re-confirm his commitment to the post-employment restrictive covenants in this Agreement. Executive further agrees that, as part of that re-confirmation, the term "Area" and Exhibit A hereto may be amended by Asbury, but only to the extent necessary to list the addresses of Asbury's headquarters and any automotive dealerships that Asbury owns and/or operates as of the last day of Executive's employment with Asbury.

#### **6. Construction/Enforcement of Post-Employment Covenants**

Executive agrees that the provisions of Sections 3, 4 and 5 are reasonable and properly required for the adequate protection of the business and the goodwill of Asbury. However, if a judicial determination is made that any of the provisions of Sections 3, 4 or 5 constitutes an unreasonable or otherwise unenforceable restriction against Executive, such provision(s) shall be modified or severed so as to permit enforcement of the provision(s) to the extent reasonable.

#### **7. Violation of Post-Employment Covenants**

Executive agrees that, in the event of a material breach by Executive of any Section of this Agreement, including Sections 3, 4, or 5, Asbury shall be entitled to: (i) inform all potential or new employers of such breach; (ii) cease payments and benefits that would otherwise be made pursuant to Section 1 above (and in lieu of such payments and benefits pay Executive five hundred dollars (\$500.00)); (iii) obtain injunctive relief and damages, including reasonable attorney's fees; and (iv) recover the amounts paid to Executive under this Agreement (other than the above-referenced \$500.00) during any period of material breach by Executive. To the extent that Executive is determined through agreement or resolution of any pending claim to not have violated any covenant at issue, he shall receive any and all severance that has not been paid under the Agreement and/or which was recovered from Executive under this Section 7.

### **GENERAL PROVISIONS**

#### **A. Employment is At Will**

Executive and Asbury acknowledge and agree that Executive is an "at will" employee, which means that either Executive or Asbury may terminate the employment relationship at any time, for any reason, with or without cause or notice, and that nothing in this Agreement shall be construed as an express or implied contract of employment.

#### **B. Execution of Release**

Executive agrees that, as a condition to the receipt of the Severance Pay and other compensation and insurance benefits described in Section 1 above, Executive shall execute a release of all claims against Asbury (and its corporate parents, subsidiaries, franchisors, franchisees, management companies, divisions, and affiliates) and the past, present and future officers, directors, agents, officials, employees, insurers and attorneys of Asbury (and its corporate parents, subsidiaries, franchisors, franchisees, management companies, divisions, and affiliates) arising out of Executive's employment or the end of his employment with Asbury, such release to not be revoked by Executive and to completely waive and release any claim of discrimination, harassment or wrongful discharge under local, state or federal law.

**C. Alternative Dispute Resolution**

Any disputes arising under or in connection with this Agreement shall be resolved by binding arbitration before an arbitrator (who shall be an attorney with at least ten years' experience in employment law) in the city where Executive was employed with Asbury and in accordance with the rules and procedures of the most recent employment rules of the American Arbitration Association. Each party may choose to retain legal counsel and shall pay its own attorneys' fees, regardless of the outcome of the arbitration. Executive may be required to pay a filing fee limited to the equivalent cost of filing in the court of jurisdiction. Asbury will pay the fees and costs of conducting the arbitration. Judgment upon the award rendered by the arbitrator may be entered in any court of jurisdiction.

**D. Non-Disparagement**

Executive agrees not to make any disclosures, issue any statements or otherwise cause to be disclosed any information which is designed, intended or might reasonably be anticipated to disparage Asbury, its officers or directors, its business, services, products, technologies and/or personnel. Nothing in this section is intended, nor shall be construed, to: (i) prohibit Executive from any communications to, or participation in any investigation or proceeding conducted by, any governmental agency with jurisdiction concerning the terms, conditions and privileges of employment or jurisdiction over Asbury's business; (ii) interfere with, restrain, or prevent Executive's communications regarding the terms and conditions of employment; or (iii) prevent Executive from otherwise engaging in any legally protected activity.

**E. Other Provisions**

(a) This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of Executive and Asbury, including any successor to or assign of Asbury.

(b) Upon the end of Executive's employment with Asbury for any reason, the provisions of this Agreement shall survive to the extent necessary to give effect to the provisions herein, including Sections 3, 4 and 5.

(c) The headings and captions are provided for reference and convenience only and shall not be considered part of this Agreement.

(d) Executive also covenants to reasonably cooperate with Asbury if Executive is needed as a witness in any litigation or legal matters involving Asbury.

(e) Any notice or other communication required or permitted to be delivered under this Agreement shall be (i) in writing, (ii) delivered personally, by nationally recognized overnight courier service or by certified or registered mail, first-class postage prepaid and return receipt requested, (iii) deemed to have been received on the date of delivery or on the third business day after mailing, and (iv) addressed as follows (or to such other address as the party entitled to notice shall later designate in accordance with these terms):

If to Asbury: Asbury Automotive Group, Inc.  
c/o The Office of the General Counsel  
2905 Premiere Parkway, Suite 300  
Duluth, GA 30097

If to Executive: To the most recent address of Executive set forth in the personnel records of Asbury.

(f) This Agreement supersedes any and all prior agreements between Asbury and Executive relating to payments upon Termination of employment or Severance Pay and may only be modified in a writing signed by Asbury and Executive.

(g) This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

(h) All payments hereunder shall be subject to any required withholding of federal, state, local and foreign taxes pursuant to any applicable law or regulation.

(i) If any provision of this Agreement shall be held invalid or unenforceable, such holding shall not affect any other provisions, and this Agreement shall be construed and enforced as if such provisions had not been included. No provision of this Agreement shall be waived unless the waiver is agreed to in writing and signed by Executive and the Chief Human Resources Officer of Asbury. No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(j) The parties hereto acknowledge and agree that, to the extent applicable, this Agreement shall be interpreted in accordance with, and incorporate the terms and conditions required by, Section 409A of the Code and the Department of Treasury regulations and other interpretive guidance issued thereunder. Notwithstanding any provision of this Agreement to the contrary, in the event that Asbury determines that any amounts payable hereunder will be immediately taxable to Executive under Section 409A of the Code and related Department of Treasury guidance, Asbury and Executive shall cooperate in good faith to (x) adopt such amendments to this Agreement and appropriate policies and procedures, including amendments and policies with retroactive effect, that they mutually determine to be necessary or appropriate

to preserve the intended tax treatment of the benefits provided by this Agreement, to preserve the economic benefits of this Agreement and to avoid less favorable accounting or tax consequences for Asbury and/or (y) take such other actions as mutually determined to be necessary or appropriate to exempt the amounts payable hereunder from Section 409A of the Code or to comply with the requirements of Section 409A of the Code and thereby avoid the application of penalty taxes thereunder.

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together will constitute one and the same instrument.

**AGREED TO AS OF July 28, 2022**

**EXECUTIVE:**

/s/ Daniel Clara

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Name: Daniel Clara

Title: Senior Vice President, Operations

**ASBURY AUTOMOTIVE GROUP, INC.**

/s/ David W. Hult

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Name: David W. Hult

Title: President & CEO

## **EXHIBIT A**

As used in the Severance Pay Agreement, “Area” means a 50-mile radius from any of the following addresses:

| <b>Address</b>            | <b>City</b>  | <b>State</b> | <b>Zip</b> |
|---------------------------|--------------|--------------|------------|
| 2905 Premiere Parkway     | Duluth       | GA           | 30097      |
| 11505 Alpharetta Highway  | Roswell      | GA           | 30076      |
| 10995 Westside Parkway    | Alpharetta   | GA           | 30009      |
| 1355 Cobb Parkway South   | Marietta     | GA           | 30060      |
| 1606 Church Street        | Decatur      | GA           | 30033      |
| 4200 Jonesboro Road       | Union City   | GA           | 30291      |
| 4197 Jonesboro Road       | Union City   | GA           | 30291      |
| 7909 Mall Parkway         | Lithonia     | GA           | 30038      |
| 2550 The Nalley Way       | Atlanta      | GA           | 30360      |
| 2020 Cobb Parkway         | Marietta     | GA           | 30080      |
| 7849 Mall Parkway         | Lithonia     | GA           | 30038      |
| 2750 South Cobb Parkway   | Smyrna       | GA           | 30080      |
| 980 Mansell Road          | Roswell      | GA           | 30076      |
| 1310 Buford Highway       | Cumming      | GA           | 30041      |
| 11130 Alpharetta Highway  | Roswell      | GA           | 30076      |
| 7969 Mall Parkway         | Lithonia     | GA           | 30038      |
| 4115 Jonesboro Road       | Union City   | GA           | 30291      |
| 1550 Mansell Road         | Alpharetta   | GA           | 30009      |
| 9899 East Arapahoe Road   | Centennial   | CO           | 80112      |
| 9899 East Arapahoe Road   | Centennial   | CO           | 80112      |
| 2501 35th Avenue          | Greeley      | CO           | 80634      |
| 4720 West 24th Street     | Greeley      | CO           | 80634      |
| 1650 West 104th Avenue    | Denver       | CO           | 80234      |
| 4105 West 96th Street     | Indianapolis | IN           | 46268      |
| 1920 North Lebanon Street | Lebanon      | IN           | 46052      |
| 745 East 56th Street      | Brownsburg   | IN           | 46112      |
| 450 East Northfield Drive | Brownsburg   | IN           | 46112      |
| 3232 Harper Road          | Indianapolis | IN           | 46240      |
| 2001 Stony Creek Road     | Noblesville  | IN           | 46060      |
| 8693 East US Highway 36   | Avon         | IN           | 46123      |
| 3477 East Conner Street   | Noblesville  | IN           | 46060      |
| 9900 Pleasant Street      | Noblesville  | IN           | 46060      |
| 4400 South US Highway 1   | Fort Pierce  | FL           | 34982      |
| 4429 US 1 South           | Fort Pierce  | FL           | 33954      |
| 7245 Blanding Boulevard   | Jacksonville | FL           | 32244      |
| 10880 Philips Highway     | Jacksonville | FL           | 32256      |

| <b>Address</b>                   | <b>City</b>    | <b>State</b> | <b>Zip</b> |
|----------------------------------|----------------|--------------|------------|
| 2655 North Volusia Avenue        | Orange City    | FL           | 32763      |
| 2677 North Volusia Avenue        | Orange City    | FL           | 32763      |
| 2308 South Woodland Boulevard    | Deland         | FL           | 32720      |
| 9650 Atlantic Boulevard          | Jacksonville   | FL           | 32225      |
| 11003 Atlantic Boulevard         | Jacksonville   | FL           | 32225      |
| 4450 US 1 South                  | Fort Pierce    | FL           | 34982      |
| 11051 South Orange Blossom Trail | Orlando        | FL           | 32837      |
| 2925 US 1 South                  | St. Augustine  | FL           | 32086      |
| 10600 Atlantic Boulevard         | Jacksonville   | FL           | 32225      |
| 10859 Philips Highway            | Jacksonville   | FL           | 32256      |
| 11340 Philips Highway            | Jacksonville   | FL           | 32256      |
| 31975 US Highway 19 North        | Palm Harbor    | FL           | 34684      |
| 4500 US 1 South                  | Fort Pierce    | FL           | 34982      |
| 13165 North Autoshow Avenue      | Surprise       | AZ           | 85388      |
| 5995 Alameda Boulevard NE        | Albuquerque    | NM           | 87113      |
| 7201 & 7501 Lomas Boulevard NE   | Albuquerque    | NM           | 87110      |
| 9733 Coors Boulevard NW          | Albuquerque    | NM           | 87114      |
| 5500 South State Street          | Murray         | UT           | 84107      |
| 2125 North University Parkway    | Provo          | UT           | 84604      |
| 2500 West 104th Avenue           | Thornton       | CO           | 80234      |
| 2727 South Havana Street         | Aurora         | CO           | 80014      |
| 10055 West Papago Freeway        | Avondale       | AZ           | 85323      |
| 8528 Lomas Boulevard NE          | Albuquerque    | NM           | 87110      |
| 222 South Auto Drive             | Boise          | ID           | 83709      |
| 755 North 500 West               | West Bountiful | UT           | 84010      |
| 1825 North University Parkway    | Provo          | UT           | 84604      |
| 1481 West Riverdale Road         | Riverdale      | UT           | 84405      |
| 10905 South Auto Mall Drive      | Sandy          | UT           | 84070      |
| 7800 East 22nd Street            | Tucson         | AZ           | 85710      |
| 350 South Havana Street          | Aurora         | CO           | 80012      |
| 10101 West Papago Freeway        | Avondale       | AZ           | 85323      |
| 4220 East 22nd Street            | Tucson         | AZ           | 85711      |
| 8665 West Bell Road              | Peoria         | AZ           | 85382      |
| 1208 West 3rd Avenue             | Spokane        | WA           | 99201      |
| 11595 West 6th Avenue            | Lakewood       | CO           | 80215      |
| 11442 South Lone Peak Parkway    | Draper         | UT           | 84020      |
| 1995 North University Parkway    | Provo          | UT           | 84604      |
| 460 East Auto Center Drive       | Mesa           | AZ           | 85204      |
| 7710 West Gratz Drive            | Boise          | ID           | 83709      |
| 5808 South State Street          | Murray         | UT           | 84107      |

| <b>Address</b>                     | <b>City</b>     | <b>State</b> | <b>Zip</b> |
|------------------------------------|-----------------|--------------|------------|
| 9820 Coors Boulevard NW            | Albuquerque     | NM           | 87114      |
| 8425 W Bell Road                   | Peoria          | AZ           | 85382      |
| 5686 South State Street            | Murray          | UT           | 84107      |
| 544 South Lindon Park Drive        | Lindon          | UT           | 84042      |
| 2400 West 104th Avenue             | Denver          | CO           | 80234      |
| 10030 East Arapahoe Road           | Centennial      | CO           | 80112      |
| 1320 Plum Valley Lane              | Highlands Ranch | CO           | 80129      |
| 2025 Riverview Auto Drive          | Mesa            | AZ           | 85201      |
| 8800 Lomas NE                      | Albuquerque     | NM           | 87112      |
| 11196 West Fairview Avenue         | Boise           | ID           | 83713      |
| 1340 South 500 West                | Salt Lake City  | UT           | 84115      |
| 1700 West 6th Street               | Corona          | CA           | 92882      |
| 6800 Federal Boulevard             | Lemon Grove     | CA           | 91945      |
| 5650 South State Street            | Murray          | UT           | 84107      |
| 8633 West Bell Road                | Peoria          | AZ           | 85382      |
| 200 West 9000 South                | Sandy           | UT           | 83704      |
| 9380 West Fairview Avenue          | Boise           | ID           | 83704      |
| 5701 South State Street            | Murray          | UT           | 84107      |
| 690 South State Street             | Orem            | UT           | 84058      |
| 5212 Freeway Park Drive            | Riverdale       | UT           | 84405      |
| 10990 South Automall Drive         | Sandy           | UT           | 84070      |
| 10910 South Automall Drive         | Sandy           | UT           | 84070      |
| 10205 West Papago Freeway          | Avondale        | AZ           | 85323      |
| 8303 West Colfax Avenue            | Lakewood        | CO           | 80214      |
| 900 West AutoMall Drive            | Tucson          | AZ           | 85705      |
| 11548 South Lone Peak Parkway      | Draper          | UT           | 84020      |
| 3908 West Wendover Avenue          | Greensboro      | NC           | 27407      |
| 8704 West Broad Street             | Richmond        | VA           | 23294      |
| 3902 West Wendover Avenue          | Greensboro      | NC           | 27407      |
| 3710 West Wendover Avenue          | Greensboro      | NC           | 27407      |
| 436 North McPherson Church Road    | Fayetteville    | NC           | 28303      |
| 256 Swain Street                   | Fayetteville    | NC           | 28303      |
| 3633 West Wendover Avenue          | Greensboro      | NC           | 27407      |
| 951 Southpoint Auto Park Boulevard | Durham          | NC           | 27713      |
| 8712 West Broad Street             | Richmond        | VA           | 23294      |
| 3900 West Wendover Avenue          | Greensboro      | NC           | 27407      |
| 3607 West Wendover Avenue          | Greensboro      | NC           | 27407      |
| 8710 West Broad Street             | Richmond        | VA           | 23294      |
| 12100 Midlothian Turnpike          | Midlothian      | VA           | 23113      |
| 1300 East State Highway 114        | Dallas          | TX           | 75261      |

| <b>Address</b>  | <b>City</b> | <b>State</b> | <b>Zip</b> |
|---|-------------|--------------|------------|
| 901 East State Highway 114                            | Grapevine   | TX           | 76051      |
| 6785 Dallas Parkway                                   | Plano       | TX           | 75024      |
| 4201 Beltway Place                                    | Arlington   | TX           | 76018      |
| 6113 Lemmon Avenue                                    | Dallas      | TX           | 75209      |
| 5601 Bryant Irvin Road                                | Fort Worth  | TX           | 76132      |
| 3515 Inwood Road                                      | Dallas      | TX           | 75209      |
| 6107 Lemmon Avenue                                    | Dallas      | TX           | 75209      |
| 2712 Laurens Road                                     | Greenville  | SC           | 29607      |
| 2668 Laurens Road                                     | Greenville  | SC           | 29607      |
| 2700 Laurms Road                                      | Greenville  | SC           | 29607      |
| 2686 Laurens Road                                     | Greenville  | SC           | 29607      |
| 11654 Olive Boulevard                                 | Creve Coeur | MO           | 63141      |
| 951 Technology Drive                                  | O'Fallon    | MO           | 63368      |
| 755 North New Ballas                                  | Creve Coeur | MO           | 63141      |
| 11910 Olive Boulevard                                 | Creve Coeur | MO           | 63141      |
| 11830 Olive Boulevard                                 | Creve Coeur | MO           | 63141      |
| 7999 West Colfax Avenue                               | Lakewood    | CO           | 80214      |
| 5500 South Broadway                                   | Littleton   | CO           | 80121      |
| 15000 West Colfax Avenue                              | Lakewood    | CO           | 80401      |
| 600 South Main Street                                 | Longmont    | CO           | 80501      |
| 8337 Rasberry Way                                     | Frederick   | CO           | 80504      |
| 801 Denver West Colorado Mills Boulevard              | Lakewood    | CO           | 80401      |
| 444 South Havana Street                               | Aurora      | CO           | 80012      |
| 780 Denver West Colorado Mills Boulevard              | Lakewood    | CO           | 80401      |
| 9207 Adamo Drive                                      | Tampa       | FL           | 33619      |
| 3810 West Hillsborough Avenue                         | Tampa       | FL           | 33614      |
| 9205 Adamo Drive                                      | Tampa       | FL           | 33619      |
| 3800 West Hillsborough Avenue                         | Tampa       | FL           | 33614      |
| 9210 Adamo Drive                                      | Tampa       | FL           | 33619      |
| 4600 North Dale Mabry Highway                         | Tampa       | FL           | 33614      |
| 4400 North Dale Mabry Highway                         | Tampa       | FL           | 33614      |
| 4051 West Plano Parkway                               | Plano       | TX           | 75093      |
| 13553 US Hwy 183 North                                | Austin      | TX           | 78750      |
| 300 West Loop 820 South                               | Ft. Worth   | TX           | 76108      |
| 1601 North Dallas Parkway<br>(7200 State Highway 121) | Frisco      | TX           | 75034      |
| 3700 West Airport Freeway                             | Irving      | TX           | 75062      |
| 6400 TX-121   | Frisco      | TX           | 75034      |



**CERTIFICATION PURSUANT TO  
RULE 13a-14(a)/15d-14(a) OF THE SECURITIES EXCHANGE ACT OF 1934  
AS ADOPTED PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, David W. Hult, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Asbury Automotive Group, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ David W. Hult

David W. Hult  
Chief Executive Officer  
July 28, 2022

**CERTIFICATION PURSUANT TO  
RULE 13a-14(a)/15d-14(a) OF THE SECURITIES EXCHANGE ACT OF 1934  
AS ADOPTED PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Michael D. Welch certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Asbury Automotive Group, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Michael D. Welch

Michael D. Welch  
Chief Financial Officer  
July 28, 2022

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Asbury Automotive Group, Inc. (the "Company") for the quarter ended June 30, 2022, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, David W. Hult, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ David W. Hult

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David W. Hult  
Chief Executive Officer  
July 28, 2022

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Asbury Automotive Group, Inc. (the "Company") for the quarter ended June 30, 2022, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Michael D. Welch, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Michael D. Welch

Michael D. Welch  
Chief Financial Officer  
July 28, 2022