

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

**FORM 10-Q**

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

For the quarterly period ended March 31, 2023

OR

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

Commission File Number: 001-34568



**KAR Auction Services, Inc.**

(Exact name of Registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation or organization)

**20-8744739**

(I.R.S. Employer Identification No.)

**11299 N. Illinois Street, Carmel, Indiana 46032**

(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: **(800) 923-3725**

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

<u>Title of each class</u>	<u>Trading symbol</u>	<u>Name of each exchange on which registered</u>
Common Stock, par value \$0.01 per share	KAR	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  Accelerated filer  Non-accelerated filer  Smaller reporting company  Emerging growth company

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.

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

As of April 30, 2023, 109,208,855 shares of the registrant's common stock, par value \$0.01 per share, were outstanding.

**KAR Auction Services, Inc.**  
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**PART I**  
**FINANCIAL INFORMATION**

**Item 1. Financial Statements**

**KAR Auction Services, Inc.**  
**Consolidated Statements of Income**  
*(In millions, except per share data)*  
*(Unaudited)*

	<b>Three Months Ended March 31,</b>	
	<b>2023</b>	<b>2022</b>
Operating revenues		
Auction fees	\$ 99.9	\$ 101.4
Service revenue	165.6	137.5
Purchased vehicle sales	55.5	46.3
Finance-related revenue	99.6	84.2
Total operating revenues	<u>420.6</u>	<u>369.4</u>
Operating expenses		
Cost of services (exclusive of depreciation and amortization)	224.2	210.8
Selling, general and administrative	108.0	118.9
Depreciation and amortization	23.0	26.0
Total operating expenses	<u>355.2</u>	<u>355.7</u>
Operating profit	65.4	13.7
Interest expense	38.3	25.6
Other (income) expense, net	7.1	1.2
Income (loss) from continuing operations before income taxes	20.0	(13.1)
Income taxes	7.3	(4.7)
Income (loss) from continuing operations	12.7	(8.4)
Income from discontinued operations, net of income taxes	—	8.1
Net income (loss)	<u>\$ 12.7</u>	<u>\$ (0.3)</u>
Net income (loss) per share - basic		
Income (loss) from continuing operations	\$ 0.01	\$ (0.16)
Income from discontinued operations	—	0.07
Net income (loss) per share - basic	<u>\$ 0.01</u>	<u>\$ (0.09)</u>
Net income (loss) per share - diluted		
Income (loss) from continuing operations	\$ 0.01	\$ (0.16)
Income from discontinued operations	—	0.07
Net income (loss) per share - diluted	<u>\$ 0.01</u>	<u>\$ (0.09)</u>

See accompanying condensed notes to consolidated financial statements

**KAR Auction Services, Inc.**  
**Consolidated Statements of Comprehensive Income**  
*(In millions)*  
*(Unaudited)*

	<b>Three Months Ended March 31,</b>	
	<b>2023</b>	<b>2022</b>
Net income (loss)	\$ 12.7	\$ (0.3)
Other comprehensive income, net of tax		
Foreign currency translation gain	2.4	1.1
Unrealized gain on interest rate derivatives, net of tax	—	9.1
Total other comprehensive income, net of tax	2.4	10.2
Comprehensive income	\$ 15.1	\$ 9.9

See accompanying condensed notes to consolidated financial statements

**KAR Auction Services, Inc.**  
**Consolidated Balance Sheets**  
*(In millions)*  
*(Unaudited)*

	<u>March 31, 2023</u>	<u>December 31, 2022</u>
<b>Assets</b>		
<b><i>Current assets</i></b>		
Cash and cash equivalents	\$ 219.6	\$ 225.7
Restricted cash	32.2	52.0
Trade receivables, net of allowances of \$17.9 and \$15.8	340.3	270.7
Finance receivables, net of allowances of \$21.0 and \$21.5	2,385.4	2,395.1
Other current assets	97.5	78.9
Total current assets	<u>3,075.0</u>	<u>3,022.4</u>
<b><i>Other assets</i></b>		
Goodwill	1,466.3	1,464.5
Customer relationships, net of accumulated amortization of \$422.7 and \$417.3	130.9	135.9
Other intangible assets, net of accumulated amortization of \$419.6 and \$406.0	228.1	231.3
Operating lease right-of-use assets	82.6	84.8
Property and equipment, net of accumulated depreciation of \$189.5 and \$197.7	120.4	123.6
Other assets	44.6	57.3
Total other assets	<u>2,072.9</u>	<u>2,097.4</u>
Total assets	<u>\$ 5,147.9</u>	<u>\$ 5,119.8</u>

See accompanying condensed notes to consolidated financial statements

**KAR Auction Services, Inc.**  
**Consolidated Balance Sheets**  
*(In millions, except share and per share data)*  
*(Unaudited)*

	<u>March 31, 2023</u>	<u>December 31, 2022</u>
<b>Liabilities, Temporary Equity and Stockholders' Equity</b>		
<b><i>Current liabilities</i></b>		
Accounts payable	\$ 683.8	\$ 551.2
Accrued employee benefits and compensation expenses	24.2	31.9
Accrued interest	12.9	7.8
Other accrued expenses	79.0	79.1
Income taxes payable	2.5	6.9
Obligations collateralized by finance receivables	1,638.2	1,677.6
Current maturities of long-term debt	225.8	288.7
Total current liabilities	<u>2,666.4</u>	<u>2,643.2</u>
<b><i>Non-current liabilities</i></b>		
Long-term debt	206.0	205.3
Deferred income tax liabilities	52.9	54.0
Operating lease liabilities	77.5	79.7
Other liabilities	6.7	6.8
Total non-current liabilities	<u>343.1</u>	<u>345.8</u>
Commitments and contingencies (Note 9)		
<b><i>Temporary equity</i></b>		
Series A convertible preferred stock	<u>612.5</u>	<u>612.5</u>
<b><i>Stockholders' equity</i></b>		
Common stock, \$0.01 par value:		
Authorized shares: 400,000,000		
Issued and outstanding shares:		
March 31, 2023: 109,185,902		
December 31, 2022: 108,914,678	1.1	1.1
Additional paid-in capital	747.4	743.8
Retained earnings	824.5	822.9
Accumulated other comprehensive loss	(47.1)	(49.5)
Total stockholders' equity	<u>1,525.9</u>	<u>1,518.3</u>
Total liabilities, temporary equity and stockholders' equity	<u>\$ 5,147.9</u>	<u>\$ 5,119.8</u>

See accompanying condensed notes to consolidated financial statements

**KAR Auction Services, Inc.**  
**Consolidated Statements of Stockholders' Equity**  
*(In millions)*  
*(Unaudited)*

	Common Stock Shares	Common Stock Amount	Additional Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Loss	Total
<b>Balance at December 31, 2022</b>	108.9	\$ 1.1	\$ 743.8	\$ 822.9	\$ (49.5)	\$ 1,518.3
Net income				12.7		12.7
Other comprehensive income					2.4	2.4
Issuance of common stock under stock plans	0.4		1.3			1.3
Surrender of RSUs for taxes	(0.1)		(1.3)			(1.3)
Stock-based compensation expense			3.6			3.6
Dividends on preferred stock				(11.1)		(11.1)
<b>Balance at March 31, 2023</b>	<b>109.2</b>	<b>\$ 1.1</b>	<b>\$ 747.4</b>	<b>\$ 824.5</b>	<b>\$ (47.1)</b>	<b>\$ 1,525.9</b>

	Common Stock Shares	Common Stock Amount	Additional Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Loss	Total
<b>Balance at December 31, 2021</b>	121.2	\$ 1.2	\$ 910.8	\$ 625.7	\$ (24.7)	\$ 1,513.0
Net loss				(0.3)		(0.3)
Other comprehensive income					10.2	10.2
Issuance of common stock under stock plans	0.5		0.6			0.6
Surrender of RSUs for taxes	(0.2)		(2.5)			(2.5)
Stock-based compensation expense			5.6			5.6
Dividends earned under stock plans			0.1	(0.1)		—
Dividends on preferred stock				(10.7)		(10.7)
<b>Balance at March 31, 2022</b>	<b>121.5</b>	<b>\$ 1.2</b>	<b>\$ 914.6</b>	<b>\$ 614.6</b>	<b>\$ (14.5)</b>	<b>\$ 1,515.9</b>

See accompanying condensed notes to consolidated financial statements

**KAR Auction Services, Inc.**  
**Consolidated Statements of Cash Flows**  
*(In millions)*  
*(Unaudited)*

	<b>Three Months Ended March 31,</b>	
	<b>2023</b>	<b>2022</b>
<b>Operating activities</b>		
Net income (loss)	\$ 12.7	\$ (0.3)
Net income from discontinued operations	—	(8.1)
<b>Adjustments to reconcile net income (loss) to net cash provided by operating activities:</b>		
Depreciation and amortization	23.0	26.0
Provision for credit losses	14.3	3.0
Deferred income taxes	0.2	2.6
Amortization of debt issuance costs	2.2	3.1
Stock-based compensation	3.6	5.0
Net change in unrealized (gain) loss on investment securities	0.1	3.0
Investment and note receivable impairment	11.0	—
Other non-cash, net	0.7	(8.7)
<b>Changes in operating assets and liabilities, net of acquisitions:</b>		
Trade receivables and other assets	(96.4)	(67.1)
Accounts payable and accrued expenses	124.7	45.0
Payments of contingent consideration in excess of acquisition-date fair value	—	(26.1)
<b>Net cash provided by (used by) operating activities - continuing operations</b>	<b>96.1</b>	<b>(22.6)</b>
<b>Net cash provided by (used by) operating activities - discontinued operations</b>	<b>—</b>	<b>(39.2)</b>
<b>Investing activities</b>		
Net increase in finance receivables held for investment	(1.7)	(229.4)
Purchases of property, equipment and computer software	(12.0)	(13.5)
Investments in securities	(0.2)	(4.1)
Proceeds from sale of investments	0.3	0.3
<b>Net cash used by investing activities - continuing operations</b>	<b>(13.6)</b>	<b>(246.7)</b>
<b>Net cash provided by (used by) investing activities - discontinued operations</b>	<b>7.0</b>	<b>(11.8)</b>
<b>Financing activities</b>		
Net (decrease) increase in book overdrafts	(0.5)	6.5
Net (decrease) increase in borrowings from lines of credit	(62.9)	108.8
Net (decrease) increase in obligations collateralized by finance receivables	(41.0)	170.5
Payments for debt issuance costs/amendments	(0.5)	—
Payments on long-term debt	—	(2.4)
Payments on finance leases	(0.5)	(1.3)
Payments of contingent consideration and deferred acquisition costs	—	(3.5)
Issuance of common stock under stock plans	1.3	0.6
Tax withholding payments for vested RSUs	(1.3)	(2.5)
Dividends paid on Series A Preferred Stock	(11.1)	—
<b>Net cash (used by) provided by financing activities - continuing operations</b>	<b>(116.5)</b>	<b>276.7</b>
<b>Net cash provided by financing activities - discontinued operations</b>	<b>—</b>	<b>22.0</b>
Net change in cash balances of discontinued operations	—	(24.3)
Effect of exchange rate changes on cash	1.1	3.0
<b>Net decrease in cash, cash equivalents and restricted cash</b>	<b>(25.9)</b>	<b>(42.9)</b>
Cash, cash equivalents and restricted cash at beginning of period	277.7	203.4
Cash, cash equivalents and restricted cash at end of period	<b>\$ 251.8</b>	<b>\$ 160.5</b>
Cash paid for interest, net of proceeds from interest rate derivatives	\$ 31.1	\$ 18.5
Cash paid for taxes, net of refunds - continuing operations	\$ 12.0	\$ 12.6
Cash paid for taxes, net of refunds - discontinued operations	\$ —	\$ —

See accompanying condensed notes to consolidated financial statements



**KAR Auction Services, Inc.**  
**Condensed Notes to Consolidated Financial Statements**  
**March 31, 2023 (Unaudited)**

**Note 1—Basis of Presentation and Nature of Operations**

***Defined Terms***

Unless otherwise indicated or unless the context otherwise requires, the following terms used herein shall have the following meanings:

- "we," "us," "our," "KAR" and "the Company" refer, collectively, to KAR Auction Services, Inc. and all of its subsidiaries;
- "ADESA" or "ADESA Auctions" refer, collectively, to ADESA, Inc., a wholly-owned subsidiary of KAR Auction Services, and ADESA, Inc.'s subsidiaries, including Openlane, Inc. (together with Openlane, Inc.'s subsidiaries, "OPENLANE"), BacklotCars, Inc. ("BacklotCars"), CARWAVE LLC ("CARWAVE"), Nth Gen Software Inc. ("TradeRev"), ADESA Remarketing Limited ("ADESA U.K.") and ADESA Europe NV and its subsidiaries ("ADESA Europe");
- "ADESA U.S. physical auction business," "ADESA U.S. physical auctions" and "ADESA U.S." refer to the auction sales, operations and staff at ADESA's U.S. vehicle logistics centers, which were sold to Carvana Group, LLC (together with Carvana Co. and its subsidiaries, "Carvana") in May 2022;
- "AFC" refers, collectively, to Automotive Finance Corporation, a wholly-owned subsidiary of ADESA, and Automotive Finance Corporation's subsidiaries and other related entities, including PWI Holdings, Inc. (which was sold on December 1, 2020);
- "Credit Agreement" refers to the Amended and Restated Credit Agreement, dated March 11, 2014 (as amended, amended and restated, modified or supplemented from time to time), among KAR Auction Services, Inc., as the borrower, the several banks and other financial institutions or entities from time to time parties thereto and JPMorgan Chase Bank N.A., as administrative agent;
- "Credit Facility" refers to the \$950 million, senior secured term loan B-6 facility due September 19, 2026 ("Term Loan B-6"), of which the outstanding amount was fully repaid in 2022, and the \$325 million, senior secured revolving credit facility due September 19, 2024 (the "Revolving Credit Facility"), the terms of which are set forth in the Credit Agreement;
- "IAA" refers, collectively, to Insurance Auto Auctions, Inc., formerly a wholly-owned subsidiary of KAR Auction Services, and Insurance Auto Auctions, Inc.'s subsidiaries and other related entities;
- "KAR Auction Services" refers to KAR Auction Services, Inc. and not to its subsidiaries;
- "Senior notes" refers to the 5.125% senior notes due 2025 (\$350 million aggregate principal was outstanding at March 31, 2023); and
- "Series A Preferred Stock" refers to the Series A Convertible Preferred Stock, par value \$0.01 per share (634,305 shares of Series A Preferred Stock were outstanding at March 31, 2023 and December 31, 2022, respectively).

***Business and Nature of Operations***

KAR is a leading digital marketplace for used vehicles, connecting sellers and buyers across North America and Europe to facilitate fast, easy and transparent transactions. Our portfolio of integrated technology, data analytics, financing, logistics, reconditioning and other remarketing solutions, combined with our vehicle logistics centers in Canada, help advance our purpose: to make wholesale easy so our customers can be more successful. As of March 31, 2023, the Marketplace segment serves a domestic and international customer base through digital marketplaces and 14 vehicle logistics center locations across Canada.

For our commercial sellers, our OPENLANE software platform supports private label digital remarketing sites and provides comprehensive solutions to our automobile manufacturer, captive finance company and other commercial customers.

**KAR Auction Services, Inc.**  
**Condensed Notes to Consolidated Financial Statements (Continued)**  
**March 31, 2023 (Unaudited)**

For dealer customers, the Company also operates BacklotCars and TradeRev digital marketplace platforms that facilitate real-time transactions between automotive dealers, coast-to-coast in the United States and Canada. The CARWAVE digital auction platform was integrated with BacklotCars in the fourth quarter of 2022, adding additional features and functionality to the BacklotCars marketplace, including a live auction format that allows dealers to sell and source inventory in a fast-paced, head-to-head bidding environment.

Internationally, our digital marketplaces also include ADESA U.K., an online wholesale used vehicle remarketing business in the United Kingdom and ADESA Europe, an online wholesale used vehicle marketplace in Continental Europe.

Remarketing services include a variety of activities designed to facilitate the transfer of used vehicles between sellers and buyers throughout the vehicle life cycle. We facilitate the exchange of these vehicles through our marketplaces, which aligns sellers and buyers. As an agent for customers, the Company generally does not take title to or ownership of vehicles sold through our marketplaces. Generally, fees are earned from the seller and buyer on each successful marketplace transaction in addition to fees earned for ancillary services. We also sell vehicles that have been purchased, for which we do take title and record the gross selling price of the vehicle sold through our marketplaces as revenue.

We also provide services such as inbound and outbound transportation logistics, reconditioning, vehicle inspection and certification, titling, administrative and collateral recovery services. We are able to serve the diverse and multi-faceted needs of our customers through the wide range of services offered.

AFC is a leading provider of floorplan financing primarily to independent used vehicle dealers and this financing is provided through approximately 100 locations throughout the United States and Canada as of March 31, 2023. Floorplan financing supports independent used vehicle dealers in North America who purchase vehicles at ADESA, BacklotCars (including CARWAVE), TradeRev, and other used vehicle and salvage auctions. In addition, AFC provides financing for dealer inventory purchased directly from wholesalers, other dealers and directly from consumers, as well as providing liquidity for customer trade-ins which encompasses settling lien holder payoffs. AFC also provides title services for their customers.

***Basis of Presentation***

The accompanying unaudited consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America ("U.S. GAAP") for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and notes required by U.S. GAAP for annual financial statements. Operating results for interim periods are not necessarily indicative of results that may be expected for the year as a whole. In the opinion of management, the consolidated financial statements reflect all adjustments, generally consisting of normal recurring accruals, necessary for a fair statement of our results of operations, cash flows and financial position for the periods presented. These consolidated financial statements and condensed notes to consolidated financial statements are unaudited and should be read in conjunction with the audited consolidated financial statements and notes thereto included in our Annual Report on Form 10-K for the year ended December 31, 2022, as filed with the Securities and Exchange Commission on March 9, 2023. The 2022 year-end consolidated balance sheet data included in this Form 10-Q was derived from the audited financial statements referenced above and does not include all disclosures required by U.S. GAAP for annual financial statements.

***Use of Estimates***

The preparation of the consolidated financial statements in conformity with U.S. GAAP requires management to make estimates based in part on assumptions about current, and for some estimates, future economic and market conditions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the period. Although the current estimates contemplate current conditions and expected future changes, as appropriate, it is reasonably possible that future conditions could differ from these estimates, which could materially affect our results of operations and financial position. Among other effects, such changes could result in future impairments of goodwill, intangible assets and long-lived assets, incremental losses on finance receivables, additional allowances on accounts receivable and deferred tax assets and changes in litigation and other loss contingencies.

**KAR Auction Services, Inc.**  
**Condensed Notes to Consolidated Financial Statements (Continued)**  
**March 31, 2023 (Unaudited)**

**Note 2—Sale of ADESA U.S. Physical Auction Business and Discontinued Operations**

In February 2022, the Company announced that it had entered into a definitive agreement with Carvana, pursuant to which Carvana would acquire the ADESA U.S. physical auction business from KAR (the "Transaction"). The Transaction was completed in May 2022 for approximately \$2.2 billion in cash and included all auction sales, operations and staff at ADESA's U.S. vehicle logistics centers and use of the ADESA.com marketplace in the U.S. The net proceeds received in connection with the Transaction were included in "Net cash provided by investing activities - discontinued operations" in the consolidated statement of cash flow for the year ended December 31, 2022. In connection with the Transaction, the Company and Carvana entered into various agreements to provide a framework for their relationship after the Transaction, including a transition services agreement for a transitional period and a commercial agreement for a term of 7 years that provides for platform and other fees for services rendered. For the three months ended March 31, 2023, KAR has received a net cash inflow from the commercial agreement and transition services agreement of approximately \$30.0 million.

KAR provided transportation services of \$21.9 million and \$17.7 million to the ADESA U.S. physical auctions for the three months ended March 31, 2023 and 2022, respectively.

The financial results of the ADESA U.S. physical auction business have been accounted for as discontinued operations for all periods presented. The business was formerly included in the Company's Marketplace reportable segment. Goodwill was allocated to the ADESA U.S. physical auctions based on relative fair value. The Transaction resulted in a pretax gain on disposal of approximately \$521.8 million for the year ended December 31, 2022. The effective tax rate for discontinued operations was approximately 60% primarily due to non-deductible goodwill recognized in the Transaction.

The following table presents the results of operations for the ADESA U.S. physical auction business that have been reclassified to discontinued operations for all periods presented (*in millions*):

	<b>Three Months Ended March 31,</b>	
	<b>2023</b>	<b>2022</b>
Operating revenues	\$ —	\$ 220.0
Operating expenses		
Cost of services (exclusive of depreciation and amortization)	—	158.6
Selling, general and administrative	—	43.9
Depreciation and amortization	—	11.2
Total operating expenses	—	213.7
Operating profit (loss)	—	6.3
Interest expense	—	0.1
Other (income) expense, net	—	(6.1)
Income (loss) from discontinued operations before income taxes	—	12.3
Income taxes	—	4.2
Income from discontinued operations	\$ —	\$ 8.1

**KAR Auction Services, Inc.**  
**Condensed Notes to Consolidated Financial Statements (Continued)**  
**March 31, 2023 (Unaudited)**

**Note 3—Stock and Stock-Based Compensation Plans**

The KAR Auction Services, Inc. Amended and Restated 2009 Omnibus Stock and Incentive Plan ("Omnibus Plan") is intended to provide equity and/or cash-based awards to our executive officers and key employees. Our stock-based compensation expense includes expense associated with KAR Auction Services service-based options ("service options"), market-based options ("market options"), performance-based restricted stock units ("PRsUs") and service-based restricted stock units ("RSUs"). We have determined that the KAR Auction Services service options, market options, PRsUs and RSUs should be classified as equity awards.

The following table summarizes our stock-based compensation expense by type of award (*in millions*):

	<b>Three Months Ended March 31,</b>	
	<b>2023</b>	<b>2022</b>
PRsUs	\$ (0.1)	\$ 1.9
RSUs	2.8	1.4
Service options	0.2	0.2
Market options	0.7	1.5
Total stock-based compensation expense	<u>\$ 3.6</u>	<u>\$ 5.0</u>

*PRsUs*

In the first quarter of 2023, we granted a target amount of approximately 0.5 million PRsUs to certain executive officers of the Company. Three quarters of the PRsUs vest if and to the extent that the Company's three-year cumulative Adjusted EBITDA ("Adjusted EBITDA PRsUs") attains certain specified goals. The other one quarter of the PRsUs vest if and to the extent that the Company's total shareholder return relative to that of companies within the S&P SmallCap 600 ("TSR PRsUs") exceeds certain levels over the three-year period ending December 31, 2025. The weighted average grant date fair value of the Adjusted EBITDA PRsUs was \$14.14 per share, which was determined using the closing price of the Company's common stock on the date of grant. The grant date fair value of the TSR PRsUs was \$21.24 per share and was developed with a Monte Carlo simulation using a multivariate Geometric Brownian Motion.

*RSUs*

In the first quarter of 2023, approximately 0.6 million RSUs were granted to certain management members of the Company. The RSUs are contingent upon continued employment and generally vest in three equal annual installments. The fair value of RSUs is the value of the Company's common stock at the date of grant and the weighted average grant date fair value of the RSUs was \$14.14 per share.

**Share Repurchase Program**

In October 2019, the board of directors authorized a repurchase of up to \$300 million of the Company's outstanding common stock, par value \$0.01 per share, through October 30, 2021. In October 2021, the board of directors authorized an extension of the October 2019 share repurchase program through December 31, 2022. On April 27, 2022, the board of directors authorized an increase in the size of the Company's \$300 million share repurchase program by an additional \$200 million and an extension of the share repurchase program through December 31, 2023. At March 31, 2023, approximately \$126.9 million of the Company's outstanding common stock remained available for repurchase under the 2019 share repurchase program. Repurchases may be made in the open market or through privately negotiated transactions, in accordance with applicable securities laws and regulations, including pursuant to repurchase plans designed to comply with Rule 10b5-1 of the Securities Exchange Act of 1934, as amended. The timing and amount of any repurchases is subject to market and other conditions. This program does not oblige the Company to repurchase any dollar amount or any number of shares under the authorization, and the program may be suspended, discontinued or modified at any time, for any reason and without notice. No shares of common stock were repurchased during the three months ended March 31, 2023 and 2022.

**KAR Auction Services, Inc.**  
**Condensed Notes to Consolidated Financial Statements (Continued)**  
**March 31, 2023 (Unaudited)**

**Note 4—Income (Loss) from Continuing Operations Per Share**

The following table sets forth the computation of income (loss) from continuing operations per share (*in millions except per share amounts*):

	<b>Three Months Ended March 31,</b>	
	<b>2023</b>	<b>2022</b>
Income (loss) from continuing operations	\$ 12.7	\$ (8.4)
Series A Preferred Stock dividends	(11.1)	(10.7)
Income from continuing operations attributable to participating securities	(0.4)	—
Income (loss) from continuing operations attributable to common stockholders	\$ 1.2	\$ (19.1)
Weighted average common shares outstanding	109.3	121.4
Effect of dilutive stock options and restricted stock awards	0.6	—
Weighted average common shares outstanding and potential common shares	109.9	121.4
Income (loss) from continuing operations per share		
Basic	\$ 0.01	\$ (0.16)
Diluted	\$ 0.01	\$ (0.16)

The Company includes participating securities (Series A Preferred Stock) in the computation of income from continuing operations per share pursuant to the two-class method. The two-class method of calculating income from continuing operations per share is an allocation method that calculates earnings per share for common stock and participating securities. Under the two-class method, total dividends provided to the holders of the Series A Preferred Stock and undistributed earnings allocated to participating securities are subtracted from income from continuing operations in determining income attributable to common stockholders.

The effect of stock options and restricted stock on income from continuing operations per share-diluted is determined through the application of the treasury stock method, whereby net proceeds received by the Company based on assumed exercises are hypothetically used to repurchase our common stock at the average market price during the period. As a result of the spin-off, there are IAA employees who hold KAR equity awards included in the calculation. Stock options that would have an anti-dilutive effect on income from continuing operations per diluted share, unexercisable market options and PRSUs subject to performance conditions which have not yet been satisfied are excluded from the calculations. Approximately 0.5 million service options and all of the market options were excluded from the calculation of diluted income from continuing operations per share for the three months ended March 31, 2023. In addition, approximately 1.6 million PRSUs were excluded from the calculation of diluted income from continuing operations per share for the three months ended March 31, 2023. In accordance with U.S. GAAP, no potential common shares were included in the computation of diluted income from continuing operations per share for the three months ended March 31, 2022, because to do so would have been anti-dilutive based on the period undistributed loss from continuing operations. Total options outstanding at March 31, 2023 and 2022 were 4.7 million and 5.7 million, respectively.

**Note 5—Finance Receivables and Obligations Collateralized by Finance Receivables**

AFC sells the majority of its U.S. dollar denominated finance receivables on a revolving basis and without recourse to a wholly-owned, bankruptcy remote, consolidated, special purpose subsidiary ("AFC Funding Corporation"), established for the purpose of purchasing AFC's finance receivables. A securitization agreement allows for the revolving sale by AFC Funding Corporation to a group of bank purchasers of undivided interests in certain finance receivables subject to committed liquidity. The agreement expires on January 31, 2026. AFC Funding Corporation had committed liquidity of \$2.0 billion for U.S. finance receivables at March 31, 2023.

We also have an agreement for the securitization of Automotive Finance Canada Inc.'s ("AFCI") receivables. AFCI's committed facility is provided through a third-party conduit (separate from the U.S. facility) and was C\$300 million on March 31, 2023. In March 2023, AFCI entered into the Receivables Purchase Agreement (the "Canadian Receivables Purchase Agreement"). The Canadian Receivables Purchase Agreement increased AFCI's committed liquidity from C\$225 million to C\$300 million and the

**KAR Auction Services, Inc.**  
**Condensed Notes to Consolidated Financial Statements (Continued)**  
**March 31, 2023 (Unaudited)**

facility's maturity date remains January 31, 2026. In addition, provisions providing a mechanism for determining alternative rates of interest were added. We capitalized approximately \$0.5 million of costs in connection with the Canadian Receivables Purchase Agreement. The receivables sold pursuant to both the U.S. and Canadian securitization agreements are accounted for as secured borrowings.

The following tables present quantitative information about delinquencies, credit loss charge-offs less recoveries ("net credit losses") and components of securitized financial assets and other related assets managed. For purposes of this illustration, delinquent receivables are defined as receivables 31 days or more past due.

<i>(in millions)</i>	<b>March 31, 2023</b>		<b>Net Credit Losses Three Months Ended March 31, 2023</b>
	<b>Total Amount of:</b>		
	<b>Receivables</b>	<b>Receivables Delinquent</b>	
Floorplan receivables	\$ 2,402.8	\$ 19.6	\$ 12.5
Other loans	3.6	—	—
<b>Total receivables managed</b>	<b>\$ 2,406.4</b>	<b>\$ 19.6</b>	<b>\$ 12.5</b>

<i>(in millions)</i>	<b>December 31, 2022</b>		<b>Net Credit Losses Three Months Ended March 31, 2022</b>
	<b>Total Amount of:</b>		
	<b>Receivables</b>	<b>Receivables Delinquent</b>	
Floorplan receivables	\$ 2,409.9	\$ 17.5	\$ 1.4
Other loans	6.7	—	—
<b>Total receivables managed</b>	<b>\$ 2,416.6</b>	<b>\$ 17.5</b>	<b>\$ 1.4</b>

The following is a summary of the changes in the allowance for credit losses related to finance receivables (*in millions*):

	<b>March 31, 2023</b>	<b>March 31, 2022</b>
<b>Allowance for Credit Losses</b>		
Balance at December 31	\$ 21.5	\$ 23.0
Provision for credit losses	12.0	1.4
Recoveries	1.6	1.9
Less charge-offs	(14.1)	(3.3)
<b>Balance at end of period</b>	<b>\$ 21.0</b>	<b>\$ 23.0</b>

As of March 31, 2023 and December 31, 2022, \$2,373.6 million and \$2,396.6 million, respectively, of finance receivables and a cash reserve of 1 or 3 percent of the obligations collateralized by finance receivables served as security for the obligations collateralized by finance receivables. The amount of the cash reserve depends on circumstances which are set forth in the securitization agreements. Obligations collateralized by finance receivables consisted of the following:

	<b>March 31, 2023</b>	<b>December 31, 2022</b>
Obligations collateralized by finance receivables, gross	\$ 1,656.5	\$ 1,697.0
Unamortized securitization issuance costs	(18.3)	(19.4)
<b>Obligations collateralized by finance receivables</b>	<b>\$ 1,638.2</b>	<b>\$ 1,677.6</b>

Proceeds from the revolving sale of receivables to the bank facilities are used to fund new loans to customers. AFC, AFC Funding Corporation and AFCI must maintain certain financial covenants including, among others, limits on the amount of debt

**KAR Auction Services, Inc.**  
**Condensed Notes to Consolidated Financial Statements (Continued)**  
**March 31, 2023 (Unaudited)**

AFC and AFCI can incur, minimum levels of tangible net worth, and other covenants tied to the performance of the finance receivables portfolio. The securitization agreements also incorporate the financial covenants of our Credit Facility. At March 31, 2023, we were in compliance with the covenants in the securitization agreements.

**Note 6—Long-Term Debt**

Long-term debt consisted of the following (in millions):

	<u>Interest Rate*</u>		<u>Maturity</u>	<u>March 31, 2023</u>	<u>December 31, 2022</u>
Term Loan B-6	Adjusted LIBOR	+ 2.25%	September 19, 2026	\$ —	\$ —
Revolving Credit Facility	Adjusted LIBOR	+ 1.75%	September 19, 2024	65.0	145.0
Senior notes		5.125%	June 1, 2025	350.0	350.0
European lines of credit	Euribor	+ 1.25%	Repayable upon demand	20.8	3.7
<b>Total debt</b>				<b>435.8</b>	<b>498.7</b>
Unamortized debt issuance costs/discounts				(4.0)	(4.7)
<b>Current portion of long-term debt</b>				<b>(225.8)</b>	<b>(288.7)</b>
<b>Long-term debt</b>				<b>\$ 206.0</b>	<b>\$ 205.3</b>

\*The interest rates presented in the table above represent the rates in place at March 31, 2023.

**Credit Facilities**

On September 19, 2019, we entered into the Third Amendment Agreement (the "Third Amendment") to the Credit Agreement. The Third Amendment provided for, among other things, the seven-year, \$950 million Term Loan B-6, and the \$325 million, five-year Revolving Credit Facility. In May 2022, the Company prepaid the \$926.2 million outstanding balance on Term Loan B-6 with proceeds from the Transaction. As a result of the prepayment, we incurred a non-cash loss on the extinguishment of debt of \$7.7 million in the second quarter of 2022. The loss was primarily a result of the write-off of unamortized debt issuance costs/discounts associated with Term Loan B-6.

The Revolving Credit Facility is available for letters of credit, working capital, permitted acquisitions and general corporate purposes. The Revolving Credit Facility also includes a \$50 million sub-limit for issuance of letters of credit and a \$60 million sub-limit for swingline loans. The Company also pays a commitment fee between 25 to 35 basis points, payable quarterly, on the average daily unused amount of the Revolving Facility based on the Company's Consolidated Senior Secured Net Leverage Ratio, from time to time.

The obligations of the Company under the Credit Facilities are guaranteed by certain of our domestic subsidiaries (the "Subsidiary Guarantors") and are secured by substantially all of the assets of the Company and the Subsidiary Guarantors, including but not limited to: (a) pledges of and first priority security interests in 100% of the equity interests of certain of the Company's and the Subsidiary Guarantors' domestic subsidiaries and 65% of the equity interests of certain of the Company's and the Subsidiary Guarantors' first tier foreign subsidiaries and (b) first priority security interests in substantially all other tangible and intangible assets of the Company and each Subsidiary Guarantor, subject to certain exceptions. The Credit Agreement contains affirmative and negative covenants that we believe are usual and customary for a senior secured credit agreement. The negative covenants include, among other things, limitations on asset sales, mergers and acquisitions, indebtedness, liens, dividends, investments and transactions with our affiliates. The Credit Agreement also requires us to maintain a Consolidated Senior Secured Net Leverage Ratio (as defined in the Credit Agreement), not to exceed 3.5 as of the last day of each fiscal quarter, if there are revolving loans outstanding. We were in compliance with the applicable covenants in the Credit Agreement at March 31, 2023.

As of March 31, 2023 and December 31, 2022, \$65.0 million and \$145.0 million was drawn on the Revolving Credit Facility, respectively. In addition, we had related outstanding letters of credit in the aggregate amount of \$19.0 million at March 31, 2023 and December 31, 2022, which reduce the amount available for borrowings under the Revolving Credit Facility.

**KAR Auction Services, Inc.**  
**Condensed Notes to Consolidated Financial Statements (Continued)**  
**March 31, 2023 (Unaudited)**

***Senior Notes***

On May 31, 2017, we issued \$950 million of 5.125% senior notes due June 1, 2025. The Company pays interest on the senior notes semi-annually in arrears on June 1 and December 1 of each year. The senior notes may be redeemed at 101.281% currently and at par as of June 1, 2023. The senior notes are guaranteed by the Subsidiary Guarantors. In August 2022, we conducted a cash tender offer to purchase up to \$600 million principal amount of the senior notes. The tender offer was oversubscribed and as such, \$600 million of the senior notes were accepted for prepayment and were prepaid in August 2022 with proceeds from the Transaction. We incurred a loss on the extinguishment of the senior notes of \$9.5 million in 2022 primarily representative of the early repayment premium and the write-off of unamortized debt issuance costs associated with the portion of the senior notes repaid.

The Company expects to use the remaining proceeds from the Transaction after the repayment of Term Loan B-6 to offer to redeem or repay a portion of the senior notes within 365 days of the close of the Transaction. The terms of the senior notes specify that excess proceeds must be reinvested or used to pay down a portion of the senior notes. Therefore, at March 31, 2023, \$140.0 million of the remaining senior notes are classified as current debt.

***European Lines of Credit***

ADESA Europe has lines of credit aggregating \$32.5 million (€30 million). The lines of credit have an aggregate \$20.8 million and \$3.7 million of borrowings outstanding at March 31, 2023 and December 31, 2022, respectively. The lines of credit are secured by certain inventory and receivables at ADESA Europe subsidiaries.

***Fair Value of Debt***

As of March 31, 2023, the estimated fair value of our long-term debt amounted to \$430.6 million. The estimates of fair value were based on broker-dealer quotes (Level 2 inputs) for our debt as of March 31, 2023. The estimates presented on long-term financial instruments are not necessarily indicative of the amounts that would be realized in a current market exchange.

**Note 7—Derivatives**

In January 2020, we entered into three pay-fixed interest rate swaps with an aggregate notional amount of \$500 million to swap variable rate interest payments under our term loan for fixed interest payments bearing a weighted average interest rate of 1.44%, for a total interest rate of 3.69%. The interest rate swaps had a five-year term, each maturing on January 23, 2025.

We originally designated the interest rate swaps as cash flow hedges. The changes in the fair value of the interest rate swaps that were included in the assessment of hedge effectiveness were recorded as a component of "Accumulated other comprehensive income." For the three months ended March 31, 2022, the Company recorded an unrealized gain on the interest rate swaps of \$9.1 million, net of tax of \$3.0 million in "Accumulated other comprehensive income." The earnings impact of the interest rate derivatives designated as cash flow hedges was recorded upon the recognition of the interest related to the hedged debt. In February 2022, we discontinued hedge accounting as we concluded that the forecasted interest rate payments were no longer probable of occurring in consideration of the Transaction and expected repayment of Term Loan B-6. As a result, the increase in the fair value of the swaps from the time of hedge accounting discontinuance to March 31, 2022 was recognized as an \$8.7 million unrealized gain in "Interest expense" in the consolidated statement of income for the three months ended March 31, 2022. In connection with the repayment of Term Loan B-6 in May 2022, we entered into swap termination agreements. We received \$16.7 million to settle and terminate the swaps, which was recognized as a realized gain in "Interest expense" in the consolidated statement of income for the three months ended June 30, 2022.



**KAR Auction Services, Inc.**  
**Condensed Notes to Consolidated Financial Statements (Continued)**  
**March 31, 2023 (Unaudited)**

**Note 8—Other (Income) Expense, Net**

Other (income) expense, net consisted of the following (*in millions*):

	<b>Three Months Ended March 31,</b>	
	<b>2023</b>	<b>2022</b>
Change in realized and unrealized (gains) losses on investment securities, net	\$ 0.1	\$ 3.0
Foreign currency (gains) losses	0.1	1.2
Investment and note receivable impairment	11.0	—
Other	(4.1)	(3.0)
Other (income) expense, net	<u>\$ 7.1</u>	<u>\$ 1.2</u>

**Fair Value Measurement of Investments**

The Company invests in certain early-stage automotive companies and funds that relate to the automotive industry. We believe these investments have resulted in the expansion of relationships in the vehicle remarketing industry. There were no realized gains on these investments for the three months ended March 31, 2023 and 2022. The Company had unrealized losses of \$0.1 million and \$3.0 million for the three months ended March 31, 2023 and 2022, respectively.

ASC 820, *Fair Value Measurement*, defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. A small portion of finance receivables for one entity were converted to investment securities during the first quarter of 2021. This entity became publicly traded during the first quarter of 2021 and as a result has a readily determinable fair value. As of March 31, 2023, investment securities measured at fair value are based on quoted market prices for identical assets (Level 1 of the fair value hierarchy) and approximated \$0.3 million. The net unrealized loss on these investment securities was \$0.1 million for the three months ended March 31, 2023. The remaining investments held of \$24.9 million do not have readily determinable fair values and the Company has elected to apply the measurement alternative to these investments and present them at cost. Investments are reported in "Other assets" in the accompanying consolidated balance sheets. Realized and unrealized gains and losses are reported in "Other (income) expense, net" in the consolidated statements of income.

In late March 2023, one of the investees we present at cost filed to reorganize its operations through the bankruptcy process. Based on this information, we recorded an other than temporary impairment of approximately \$3.7 million in "Other (income) expense, net" representing our entire equity investment in the company. In addition, we also had a note receivable with this investee for \$7.3 million, on which we recorded a credit impairment loss in "Other (income) expense, net" in the first quarter of 2023.

**Note 9—Commitments and Contingencies**

We are involved in litigation and disputes arising in the ordinary course of business, such as actions related to injuries; property damage; handling, storage or disposal of vehicles; environmental laws and regulations; and other litigation incidental to the business such as employment matters and dealer disputes. Management considers the likelihood of loss or the incurrence of a liability, as well as the ability to reasonably estimate the amount of loss, in determining loss contingencies. We accrue an estimated loss contingency when it is probable that a liability has been incurred and the amount of loss (or range of possible losses) can be reasonably estimated. Management regularly evaluates current information available to determine whether accrual amounts should be adjusted. Accruals for contingencies including litigation and environmental matters are included in "Other accrued expenses" at undiscounted amounts and exclude claims for recoveries from insurance or other third parties. These accruals are adjusted periodically as assessment and remediation efforts progress, or as additional technical or legal information becomes available. If the amount of an actual loss is greater than the amount accrued, this could have an adverse impact on our operating results in that period. Although the outcome of litigation cannot be accurately predicted, based on evaluation of information presently available, our management does not currently believe that the ultimate resolution of these actions will have a material adverse effect on our financial condition, results of operations or cash flows. Legal fees are expensed as incurred. There has been no significant change in the legal and regulatory proceedings which were disclosed in our Annual Report on Form 10-K for the year ended December 31, 2022.

**KAR Auction Services, Inc.**  
**Condensed Notes to Consolidated Financial Statements (Continued)**  
**March 31, 2023 (Unaudited)**

**Note 10—Accumulated Other Comprehensive Loss**

Accumulated other comprehensive loss consisted of the following (*in millions*):

	<b>March 31, 2023</b>	<b>December 31, 2022</b>
Foreign currency translation loss	\$ (47.1)	\$ (49.5)
Accumulated other comprehensive loss	<u>\$ (47.1)</u>	<u>\$ (49.5)</u>

**Note 11—Segment Information**

ASC 280, *Segment Reporting*, requires reporting of segment information that is consistent with the manner in which the chief operating decision maker operates and views the Company. Our operations are grouped into two operating segments: Marketplace and Finance, which also serve as our reportable business segments. These reportable business segments offer different services and have fundamental differences in their operations. Beginning in the first quarter of 2022, results of the ADESA U.S. physical auctions are reported as discontinued operations (see Note 2).

Financial information regarding our reportable segments is set forth below as of and for the three months ended March 31, 2023 (*in millions*):

	<b>Marketplace</b>	<b>Finance</b>	<b>Consolidated</b>
Operating revenues	\$ 321.0	\$ 99.6	\$ 420.6
Operating expenses			
Cost of services (exclusive of depreciation and amortization)	207.8	16.4	224.2
Selling, general and administrative	95.6	12.4	108.0
Depreciation and amortization	21.2	1.8	23.0
Total operating expenses	<u>324.6</u>	<u>30.6</u>	<u>355.2</u>
Operating profit (loss)	(3.6)	69.0	65.4
Interest expense	8.0	30.3	38.3
Other (income) expense, net	7.0	0.1	7.1
Intercompany expense (income)	6.4	(6.4)	—
Income (loss) from continuing operations before income taxes	<u>(25.0)</u>	<u>45.0</u>	<u>20.0</u>
Income taxes	(3.9)	11.2	7.3
Income (loss) from continuing operations	<u>\$ (21.1)</u>	<u>\$ 33.8</u>	<u>\$ 12.7</u>
Total assets	<u>\$ 2,376.5</u>	<u>\$ 2,771.4</u>	<u>\$ 5,147.9</u>

**KAR Auction Services, Inc.**  
**Condensed Notes to Consolidated Financial Statements (Continued)**  
**March 31, 2023 (Unaudited)**

Financial information regarding our reportable segments is set forth below as of and for the three months ended March 31, 2022 (*in millions*):

	<b>Marketplace</b>	<b>Finance</b>	<b>Consolidated</b>
Operating revenues	\$ 285.2	\$ 84.2	\$ 369.4
Operating expenses			
Cost of services (exclusive of depreciation and amortization)	195.8	15.0	210.8
Selling, general and administrative	108.4	10.5	118.9
Depreciation and amortization	23.9	2.1	26.0
Total operating expenses	328.1	27.6	355.7
Operating profit (loss)	(42.9)	56.6	13.7
Interest expense	13.3	12.3	25.6
Other (income) expense, net	(1.8)	3.0	1.2
Intercompany expense (income)	0.1	(0.1)	—
Income (loss) from continuing operations before income taxes	(54.5)	41.4	(13.1)
Income taxes	(15.1)	10.4	(4.7)
Income (loss) from continuing operations	\$ (39.4)	\$ 31.0	\$ (8.4)
Total assets	\$ 2,630.3	\$ 3,103.5	\$ 5,733.8

**Geographic Information**

Our foreign operations include Canada, Continental Europe and the U.K. Approximately 60% and 64% of our foreign operating revenues were from Canada for the three months ended March 31, 2023 and 2022, respectively. Most of the remaining foreign operating revenues were generated from Continental Europe. Information regarding the geographic areas of our operations is set forth below (*in millions*):

	<b>Three Months Ended March 31,</b>	
	<b>2023</b>	<b>2022</b>
<b>Operating revenues</b>		
U.S.	\$ 272.2	\$ 231.1
Foreign	148.4	138.3
	\$ 420.6	\$ 369.4

**Note 12—Subsequent Event**

On May 2, 2023, the Company announced that it is changing its name to OPENLANE, Inc., effective May 15, 2023. The change reflects the Company's transformation to a more asset-light, digital marketplace company and signals a new simplified, customer-first approach to used vehicle remarketing. OPENLANE will serve as both the parent company brand and the go-to-market brand for the Company's digital marketplaces in the U.S., Canada and Europe. OPENLANE will continue trading on the New York Stock Exchange under the ticker symbol "KAR." As the OPENLANE branded marketplace will replace the existing branded marketplaces, the Company will evaluate the \$122.8 million carrying amount of its indefinite-lived ADESA tradename, as well as the \$1.3 million carrying amount for certain other definite-lived tradenames associated with recent acquisitions, which may result in a potential non-cash impairment charge in the second quarter of 2023. In addition, the Company will reassess the useful life of the ADESA tradename in the second quarter of 2023.

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

### Forward-Looking Statements

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 and which are subject to certain risks, trends and uncertainties. In particular, statements made in this report on Form 10-Q that are not historical facts (including, but not limited to, expectations, estimates, assumptions and projections regarding the industry, business, future operating results, potential acquisitions and anticipated cash requirements) may be forward-looking statements. Words such as "should," "may," "will," "can," "of the opinion," "confident," "anticipates," "expects," "intends," "plans," "believes," "seeks," "estimates," "continues," "outlook," "initiatives," "goals," "opportunities" and similar expressions identify forward-looking statements. Such statements, including statements regarding the potential impacts of the COVID-19 pandemic and adverse market conditions; our future growth; anticipated cost savings, revenue increases, credit losses and capital expenditures; contractual obligations; dividend declarations and payments; common stock repurchases; tax rates and assumptions; strategic initiatives, acquisitions and dispositions; our competitive position and retention of customers; and our continued investment in information technology, are not guarantees of future performance and are subject to risks and uncertainties that could cause actual results to differ materially from the results projected, expressed or implied by these forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in the section entitled "Risk Factors" in this Quarterly Report on Form 10-Q and Item 1A "Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2022, filed on March 9, 2023, and those described from time to time in our future reports filed with the Securities and Exchange Commission. Many of these risk factors are outside of our control, and as such, they involve risks which are not currently known that could cause actual results to differ materially from those discussed or implied herein. The forward-looking statements in this document are made as of the date on which they are made and we do not undertake to update our forward-looking statements.

### Automotive Industry and Economic Impacts on our Business

The automotive industry has experienced unprecedented market conditions, caused in part by supply chain issues, the shortage of semiconductors and associated delays in new vehicle production. These factors have resulted in significant fluctuations in used vehicle values and declines in vehicle volumes in the wholesale market. We expect this volatility to continue.

In addition, macroeconomic factors, including inflationary pressures, rising interest rates, volatility of oil and natural gas prices and declining consumer confidence impact the affordability and demand for new and used vehicles. Declining economic conditions present a risk to our operations and the stability of the automotive industry. Given the nature of these factors, we cannot predict whether or for how long certain trends will continue, nor to what degree these trends will impact us in the future.

### Overview

We are a leading digital marketplace for used vehicles, connecting sellers and buyers across North America and Europe to facilitate fast, easy and transparent transactions. Our business is divided into two reportable business segments, each of which is an integral part of the wholesale used vehicle remarketing industry: Marketplace and Finance.

- The Marketplace segment serves a domestic and international customer base through digital marketplaces and vehicle logistics center locations across Canada. Powered with software developed by OPENLANE, comprehensive private label remarketing solutions are offered to automobile manufacturers, captive finance companies and other commercial customers to offer vehicles digitally. Vehicles sold on our digital platforms are typically sold by commercial fleet operators, financial institutions, rental car companies, new and used vehicle dealers and vehicle manufacturers and their captive finance companies to franchise and independent used vehicle dealers. We also provide value-added ancillary services including inbound and outbound transportation logistics, reconditioning, vehicle inspection and certification, titling, administrative and collateral recovery services. Our digital marketplaces also include BacklotCars, an app and web-based dealer-to-dealer wholesale vehicle platform utilized in the United States (CARWAVE was integrated with BacklotCars in the fourth quarter of 2022), TradeRev, an online automotive remarketing platform in Canada where dealers can sell and source used vehicle inventory at any time, ADESA U.K., an online wholesale used vehicle remarketing business in the United Kingdom and ADESA Europe, an online wholesale vehicle marketplace in Continental Europe.
- Through AFC, the Finance segment provides short-term, inventory-secured financing, known as floorplan financing, primarily to independent used vehicle dealers throughout the United States and Canada. In addition, AFC provides liquidity for customer trade-ins which encompasses settling lien holder payoffs. AFC also provides title services for their customers. These services are provided through AFC's digital servicing network as well as its physical locations throughout North America.

Beginning in the first quarter of 2022, results of the ADESA U.S. physical auctions are now reported as discontinued operations (see Note 2 of the accompanying unaudited financial statements).

### ***Industry Trends***

#### **Wholesale Used Vehicle Industry**

We believe the U.S. and Canadian wholesale used vehicle industry has a total addressable market of approximately 20 million vehicles, which can fluctuate depending on seasonality and a variety of other macro-economic factors. This wholesale used vehicle industry consists of the commercial market (commercial sellers that sell to franchise and independent dealers) and the dealer-to-dealer market (franchise and independent dealers that both buy and sell vehicles). The Company supports the majority of commercial sellers in North America through our OPENLANE technology. We believe digital applications, such as BacklotCars and TradeRev, may provide an opportunity to expand the total addressable market for dealer-to-dealer transactions. The supply chain issues and current market conditions facing the automotive industry, including the disruption of new vehicle production, low new vehicle supply and historically high used vehicle pricing have had a material impact on the wholesale used vehicle industry.

#### **Automotive Finance**

AFC works with independent used vehicle dealers to improve their results by providing a comprehensive set of business and financial solutions that leverage its local presence of branches and in-market representatives, industry experience and scale, as well as KAR affiliations. AFC's North American dealer base was comprised of approximately 15,200 dealers in 2022.

Key challenges for the independent used vehicle dealer include demand for used vehicles, disruptions in pricing of used vehicle inventory, access to consumer financing, increased interest rates and increased used car retail activity of franchise and public dealerships (most of which do not utilize AFC or its competitors for floorplan financing). These same challenges, to the extent they occur, could result in a material negative impact on AFC's results of operations. A significant decline in used vehicle sales would result in a decrease in consumer auto loan originations and an increased number of dealers defaulting on their loans. In addition, volatility in wholesale vehicle pricing impacts the value of recovered collateral on defaulted loans and the resulting severity of credit losses at AFC. A decrease in wholesale used car pricing could lead to increased losses if dealers are unable to satisfy their obligations.

#### ***Seasonality***

The volume of vehicles sold through our marketplaces generally fluctuates from quarter-to-quarter. This seasonality is caused by several factors including weather, the timing of used vehicles available for sale from selling customers, holidays, and the seasonality of the retail market for used vehicles, which affects the demand side of the auction industry. Wholesale used vehicle volumes tend to decline during prolonged periods of winter weather conditions. As a result, revenues and operating expenses related to volume will fluctuate accordingly on a quarterly basis. The fourth calendar quarter typically experiences lower used vehicle volume as well as additional costs associated with the holidays and winter weather.

In addition, changes in working capital vary from quarter-to-quarter as a result of the timing of collections and disbursements of funds to consignors from marketplace sales held near period end.

#### ***Sources of Revenues and Expenses***

The vehicles sold on our marketplaces generate auction fees from buyers and sellers. The Company generally does not take title to these consigned vehicles and records only its auction fees as revenue ("Auction fees" in the consolidated statement of income) because it has no influence on the vehicle auction selling price agreed to by the seller and the buyer at the auction. The Company does not record the gross selling price of the consigned vehicles sold at auction as revenue. The Company generally enforces its rights to payment for seller transactions through net settlement provisions following the sale of a vehicle. Marketplace services such as inbound and outbound transportation logistics, reconditioning, vehicle inspection and certification, collateral recovery services and technology solutions are generally recognized at the time of service ("Service revenue" in the consolidated statement of income). The Company also sells vehicles that have been purchased, which represent approximately 1% of the total volume of vehicles sold. For these types of sales, the Company does record the gross selling price of purchased vehicles sold at auction as revenue ("Purchased vehicle sales" in the consolidated statement of income) and the gross purchase price of the vehicles as "Cost of services." AFC's revenue ("Finance-related revenue" in the consolidated statement of income) is comprised of interest and fee income, provision for credit losses and other revenues associated with our finance receivables.

Although Marketplace revenues primarily include auction fees and service revenue, our related receivables and payables include the gross value of the vehicles sold. Trade receivables include the unremitted purchase price of vehicles purchased by third parties through our marketplaces, fees to be collected from those buyers and amounts due for services provided by us

related to certain consigned vehicles. The amounts due with respect to the services provided by us related to certain consigned vehicles are generally deducted from the sales proceeds upon the eventual auction or other disposition of the related vehicles. Accounts payable include amounts due sellers from the proceeds of the sale of their consigned vehicles less any fees.

Our operating expenses consist of cost of services, selling, general and administrative and depreciation and amortization. Cost of services is composed of payroll and related costs, subcontract services, the cost of vehicles purchased, supplies, insurance, property taxes, utilities, service contract claims, maintenance and lease expense related to the auction sites and loan offices. Cost of services excludes depreciation and amortization. Selling, general and administrative expenses are composed of payroll and related costs, sales and marketing, information technology services and professional fees.

## Results of Operations

### Overview of Results of KAR Auction Services, Inc. for the Three Months Ended March 31, 2023 and 2022:

<i>(Dollars in millions except per share amounts)</i>	Three Months Ended March 31,	
	2023	2022
Revenues from continuing operations		
Auction fees	\$ 99.9	\$ 101.4
Service revenue	165.6	137.5
Purchased vehicle sales	55.5	46.3
Finance-related revenue	99.6	84.2
Total revenues from continuing operations	420.6	369.4
Cost of services*	224.2	210.8
Gross profit*	196.4	158.6
Selling, general and administrative	108.0	118.9
Depreciation and amortization	23.0	26.0
Operating profit	65.4	13.7
Interest expense	38.3	25.6
Other (income) expense, net	7.1	1.2
Income (loss) from continuing operations before income taxes	20.0	(13.1)
Income taxes	7.3	(4.7)
Income (loss) from continuing operations	12.7	(8.4)
Income from discontinued operations, net of income taxes	—	8.1
Net income (loss)	\$ 12.7	\$ (0.3)
Income (loss) from continuing operations per share		
Basic	\$ 0.01	\$ (0.16)
Diluted	\$ 0.01	\$ (0.16)

\* Exclusive of depreciation and amortization

#### Discontinued Operations

The financial performance of the ADESA U.S. physical auction business is presented as discontinued operations. As a result, revenue, cost of services and all costs of discontinued operations are presented as one line item in the above table as "Income from discontinued operations, net of income taxes."

#### Overview

For the three months ended March 31, 2023, we had revenue of \$420.6 million compared with revenue of \$369.4 million for the three months ended March 31, 2022, an increase of 14%. For a further discussion of revenues, gross profit and selling, general and administrative expenses, see the segment results discussions below.

#### Depreciation and Amortization

Depreciation and amortization decreased \$3.0 million, or 12%, to \$23.0 million for the three months ended March 31, 2023, compared with \$26.0 million for the three months ended March 31, 2022. The decrease in depreciation and amortization was primarily the result of assets that have become fully depreciated and a reduction in assets placed in service.

### Interest Expense

Interest expense increased \$12.7 million, or 50%, to \$38.3 million for the three months ended March 31, 2023, compared with \$25.6 million for the three months ended March 31, 2022. Interest expense increased \$18.0 million at AFC and the increase was attributable to an increase in the average interest rate on the AFC securitization obligations to approximately 6.6% for the three months ended March 31, 2023, as compared with approximately 2.3% for the three months ended March 31, 2022. In addition, in March 2022, there was an unrealized gain of \$8.7 million related to the discontinuance of hedge accounting for the interest rate swaps. These items were partially offset by a decrease in interest expense resulting from repayments of term loan and senior note debt in 2022.

### Other (Income) Expense, Net

For the three months ended March 31, 2023, we had other expense of \$7.1 million compared with \$1.2 million for the three months ended March 31, 2022. The increase in other expense was primarily attributable to the impairment of an equity security and note receivable with the same investee aggregating \$11.0 million, partially offset by a \$2.9 million decrease in unrealized losses on investment securities, a \$1.1 million decrease in foreign currency losses on intercompany balances and an increase in other miscellaneous income aggregating \$1.1 million.

### Income Taxes

We had an effective tax rate of 36.5% for the three months ended March 31, 2023, compared with an effective tax rate of 35.9% on a pre-tax loss for the three months ended March 31, 2022.

### Income from Discontinued Operations

In May 2022, Carvana acquired the ADESA U.S. physical auction business from KAR. As such, the financial results of the ADESA U.S. physical auction business have been accounted for as discontinued operations for all periods presented. For the three months ended March 31, 2023 and 2022, the Company's financial statements included income from discontinued operations of \$0.0 million and \$8.1 million, respectively. For further discussion, reference the condensed notes to the consolidated financial statements.

### Impact of Foreign Currency

For the three months ended March 31, 2023 compared with the three months ended March 31, 2022, the change in the Canadian dollar exchange rate decreased revenue by \$6.0 million, operating profit by \$1.7 million and net income by \$1.0 million. For the three months ended March 31, 2023 compared with the three months ended March 31, 2022, the change in the euro exchange rate decreased revenue by \$3.0 million, operating profit by \$0.2 million and net income by \$0.1 million.

### Marketplace Results

<i>(Dollars in millions, except per vehicle amounts)</i>	<b>Three Months Ended March 31,</b>	
	<b>2023</b>	<b>2022</b>
Auction fees	\$ 99.9	\$ 101.4
Service revenue	165.6	137.5
Purchased vehicle sales	55.5	46.3
Total Marketplace revenue from continuing operations	321.0	285.2
Cost of services*	207.8	195.8
Gross profit*	113.2	89.4
Selling, general and administrative	95.6	108.4
Depreciation and amortization	21.2	23.9
Operating profit (loss)	\$ (3.6)	\$ (42.9)
Commercial vehicles sold	167,000	174,000
Dealer consignment vehicles sold	163,000	177,000
Total vehicles sold	330,000	351,000
Gross profit percentage, excluding purchased vehicles*	42.6%	37.4%

\* Exclusive of depreciation and amortization



### *Total Marketplace Revenue*

Revenue from the Marketplace segment increased \$35.8 million, or 13%, to \$321.0 million for the three months ended March 31, 2023, compared with \$285.2 million for the three months ended March 31, 2022. The change in revenue included the impact of decreases in revenue of \$5.2 million and \$3.0 million due to fluctuations in the Canadian dollar exchange rate and the euro exchange rate, respectively. The increase in revenue was primarily attributable to the increases in service revenue and purchased vehicle sales (discussed below).

The 6% decrease in the number of vehicles sold was comprised of a 4% decline in commercial volumes and an 8% decrease in dealer consignment volumes. The decrease in the number of vehicles sold was driven by an industry-wide lack of wholesale used vehicle supply.

### *Auction Fees*

Auction fees decreased \$1.5 million, or 1%, to \$99.9 million for the three months ended March 31, 2023, compared with \$101.4 million for the three months ended March 31, 2022. The decrease in auction fees was primarily the result of a decrease in the number of vehicles sold. Auction fees per vehicle sold for the three months ended March 31, 2023 increased \$14, or 5%, to \$303, compared with \$289 for the three months ended March 31, 2022. The increase in auction fees per vehicle sold reflects an increase in auction fees and a smaller mix of lower-fee commercial off-premise vehicles, partially offset by lower vehicle values.

### *Service Revenue*

Service revenue increased \$28.1 million, or 20%, to \$165.6 million for the three months ended March 31, 2023, compared with \$137.5 million for the three months ended March 31, 2022, primarily as a result of increases in repossession and remarketing fees of \$10.5 million, transportation revenue of \$8.2 million, third-party fees for platform services of \$6.6 million, inspection service revenue of \$2.3 million and a net increase in other miscellaneous service revenues aggregating approximately \$0.5 million.

### *Purchased Vehicle Sales*

Purchased vehicle sales, which include the entire selling price of the vehicle, increased \$9.2 million, or 20%, to \$55.5 million for the three months ended March 31, 2023, compared with \$46.3 million for the three months ended March 31, 2022, primarily as a result of an increase in purchased vehicles sold and the average selling price of purchased vehicles sold in Europe.

### *Gross Profit*

For the three months ended March 31, 2023, gross profit from the Marketplace segment increased \$23.8 million, or 27%, to \$113.2 million, compared with \$89.4 million for the three months ended March 31, 2022. Revenue increased 13% for the three months ended March 31, 2023, while cost of services increased 6% during the same period. Gross profit from the Marketplace segment was 35.3% of revenue for the three months ended March 31, 2023, compared with 31.3% of revenue for the three months ended March 31, 2022. Excluding purchased vehicle sales, gross profit as a percentage of revenue was 42.6% and 37.4% for the three months ended March 31, 2023 and 2022, respectively. The entire selling and purchase price of the vehicle is recorded as revenue and cost of services for purchased vehicles sold.

Gross profit as a percentage of revenue increased for the three ended March 31, 2023 as compared with the three months ended March 31, 2022, primarily due to improved transportation margins, an increase in revenue for vehicles sold on dealer-to-dealer platforms and an increase in third-party fees for platform services.

### *Selling, General and Administrative*

Selling, general and administrative expenses from the Marketplace segment decreased \$12.8 million, or 12%, to \$95.6 million for the three months ended March 31, 2023, compared with \$108.4 million for the three months ended March 31, 2022, primarily as a result of decreases in professional fees of \$6.3 million, information technology costs of \$4.4 million, severance of \$2.6 million, stock-based compensation of \$1.6 million, fluctuations in the Canadian exchange rate of \$1.4 million and telecom expenses of \$0.8 million, partially offset by increases in bad debt expense of \$0.7 million, marketing costs of \$0.6 million, incentive-based compensation of \$0.6 million and other miscellaneous expenses aggregating \$2.4 million.

**Finance Results**

<i>(Dollars in millions except volumes and per loan amounts)</i>	<b>Three Months Ended March 31,</b>	
	<b>2023</b>	<b>2022</b>
Finance-related revenue		
Interest income	\$ 60.6	\$ 43.2
Fee income	47.6	40.2
Other revenue	3.4	2.2
Provision for credit losses	(12.0)	(1.4)
Total Finance revenue	99.6	84.2
Cost of services*	16.4	15.0
Gross profit*	83.2	69.2
Selling, general and administrative	12.4	10.5
Depreciation and amortization	1.8	2.1
Operating profit	\$ 69.0	\$ 56.6
Loan transactions	420,000	372,000
Revenue per loan transaction	\$ 237	\$ 226

\* Exclusive of depreciation and amortization

*Revenue*

For the three months ended March 31, 2023, the Finance segment revenue increased \$15.4 million, or 18%, to \$99.6 million, compared with \$84.2 million for the three months ended March 31, 2022. The increase in revenue was primarily the result of a 13% increase in loan transactions and a 5% increase in revenue per loan transaction.

Revenue per loan transaction, which includes both loans paid off and loans curtailed, increased \$11, or 5%, primarily as a result of an increase in interest yields driven by an increase in prime rates (Federal Reserve raised interest rates 450 basis points since March 31, 2022), an increase in floorplan fees and other fee income per unit and an increase in average portfolio duration, partially offset by an increase in net credit losses and a decrease in loan values.

The provision for credit losses increased to 2.0% of the average managed receivables for the three months ended March 31, 2023 from 0.2% for the three months ended March 31, 2022. The provision for credit losses is expected to be 2% or under, annually, of the average managed receivables balance. However, the actual losses in any particular quarter could deviate from this range.

*Gross Profit*

For the three months March 31, 2023, gross profit for the Finance segment increased \$14.0 million, or 20%, to \$83.2 million, or 83.5% of revenue, compared with \$69.2 million, or 82.2% of revenue, for the three months ended March 31, 2022. The increase in gross profit as a percent of revenue was primarily the result of an 18% increase in revenue, partially offset by a 9% increase in cost of services. The increase in cost of services was primarily the result of increases in compensation expense of \$0.7 million, lot check expenses of \$0.5 million and other miscellaneous expenses aggregating \$0.2 million.

*Selling, General and Administrative*

Selling, general and administrative expenses for the Finance segment increased \$1.9 million, or 18%, to \$12.4 million for the three months ended March 31, 2023, compared with \$10.5 million for the three months ended March 31, 2022 primarily as a result of increases in information technology costs of \$0.8 million, compensation expense of \$0.5 million and other miscellaneous expenses aggregating \$0.6 million.

**LIQUIDITY AND CAPITAL RESOURCES**

We believe that the significant indicators of liquidity for our business are cash on hand, cash flow from operations, working capital and amounts available under our Credit Facility. Our principal sources of liquidity consist of cash generated by operations and borrowings under our Revolving Credit Facility.

<i>(Dollars in millions)</i>	<b>March 31, 2023</b>	<b>December 31, 2022</b>	<b>March 31, 2022</b>
Cash and cash equivalents	\$ 219.6	\$ 225.7	\$ 134.2
Restricted cash	32.2	52.0	26.3
Working capital	408.6	379.2	1,023.2
Amounts available under the Revolving Credit Facility	241.0	161.0	224.0
Cash provided by (used by) operating activities for the three months ended	96.1		(22.6)

We regularly evaluate alternatives for our capital structure and liquidity given our expected cash flows, growth and operating capital requirements as well as capital market conditions.

**Working Capital**

A substantial amount of our working capital is generated from the payments received for services provided. The majority of our working capital needs are short-term in nature, usually less than a week in duration. Most of the financial institutions place a temporary hold on the availability of the funds deposited that generally can range up to two business days, resulting in cash in our accounts and on our balance sheet that is unavailable for use until it is made available by the various financial institutions. There are outstanding checks (book overdrafts) to sellers and vendors included in current liabilities. Because a portion of these outstanding checks for operations in the U.S. are drawn upon bank accounts at financial institutions other than the financial institutions that hold the cash, we cannot offset all the cash and the outstanding checks on our balance sheet. Changes in working capital vary from quarter-to-quarter as a result of the timing of collections and disbursements of funds to consignors from marketplace sales held near period end.

Approximately \$160.5 million of available cash was held by our foreign subsidiaries at March 31, 2023. If funds held by our foreign subsidiaries were to be repatriated, state and local income tax expense and withholding tax expense would need to be recognized, net of any applicable foreign tax credits.

AFC offers short-term inventory-secured financing, also known as floorplan financing, to independent used vehicle dealers. Financing is primarily provided for terms of 30 to 90 days. AFC principally generates its funding through the sale of its receivables. The receivables sold pursuant to the securitization agreements are accounted for as secured borrowings. For further discussion of AFC's securitization arrangements, see "Securitization Facilities."

**Credit Facilities**

On September 19, 2019, we entered into the seven-year, \$950 million Term Loan B-6 and the \$325 million, five-year Revolving Credit Facility. In May 2022, the Company prepaid the \$926.2 million outstanding balance on Term Loan B-6 with proceeds from the Transaction. As a result of the prepayment, we incurred a non-cash loss on the extinguishment of debt of \$7.7 million in the second quarter of 2022. The loss was primarily a result of the write-off of unamortized debt issuance costs/discounts associated with Term Loan B-6.

The Revolving Credit Facility, with a maturity date of September 19, 2024, is available for letters of credit, working capital, permitted acquisitions and general corporate purposes. The Revolving Credit Facility also includes a \$50 million sub-limit for issuance of letters of credit and a \$60 million sub-limit for swingline loans.

As set forth in the Credit Agreement, loans under the Revolving Credit Facility will bear interest at a rate calculated based on the type of borrowing (either adjusted LIBOR or Base Rate) and the Company's Consolidated Senior Secured Net Leverage Ratio (as defined in the Credit Agreement), with such rate ranging from 2.25% to 1.75% for adjusted LIBOR loans and from 1.25% to 0.75% for Base Rate loans. The Company also pays a commitment fee between 25 to 35 basis points, payable quarterly, on the average daily unused amount of the Revolving Facility based on the Company's Consolidated Senior Secured Net Leverage Ratio, from time to time.

As of March 31, 2023 and December 31, 2022, \$65.0 million and \$145.0 million was drawn on the Revolving Credit Facility, respectively. We had related outstanding letters of credit in the aggregate amount of \$19.0 million at March 31, 2023 and December 31, 2022, respectively, which reduce the amount available for borrowings under the Revolving Credit Facility. Our European operations have lines of credit aggregating \$32.5 million (€30 million) of which \$20.8 million was drawn at March 31, 2023.

The obligations of the Company under the Credit Facilities are guaranteed by certain of our domestic subsidiaries (the "Subsidiary Guarantors") and are secured by substantially all of the assets of the Company and the Subsidiary Guarantors, including but not limited to: (a) pledges of and first priority security interests in 100% of the equity interests of certain of the Company's and the Subsidiary Guarantors' domestic subsidiaries and 65% of the equity interests of certain of the Company's and the Subsidiary Guarantors' first tier foreign subsidiaries and (b) first priority security interests in substantially all other tangible and intangible assets of the Company and each Subsidiary Guarantor, subject to certain exceptions.

Certain covenants contained within the Credit Agreement are critical to an investor's understanding of our financial liquidity, as the failure to maintain compliance with these covenants could result in a default and allow the lenders under the Credit Agreement to declare all amounts borrowed immediately due and payable. The Credit Agreement contains a financial covenant requiring compliance with a Consolidated Senior Secured Net Leverage Ratio not to exceed 3.5 as of the last day of each fiscal quarter if revolving loans are outstanding. The Consolidated Senior Secured Net Leverage Ratio is calculated as consolidated total debt (as defined in the Credit Agreement) divided by the last four quarters consolidated Adjusted EBITDA. Consolidated total debt includes term loan borrowings, revolving loans, finance lease liabilities and other obligations for borrowed money less unrestricted cash as defined in the Credit Agreement. Consolidated Adjusted EBITDA is EBITDA (earnings before interest expense, income taxes, depreciation and amortization) adjusted to exclude among other things (a) gains and losses from asset sales; (b) unrealized foreign currency translation gains and losses in respect of indebtedness; (c) certain non-recurring gains and losses; (d) stock-based compensation expense; (e) certain other non-cash amounts included in the determination of net income; (f) charges and revenue reductions resulting from purchase accounting; (g) minority interest; (h) consulting expenses incurred for cost reduction, operating restructuring and business improvement efforts; (i) expenses realized upon the termination of employees and the termination or cancellation of leases, software licenses or other contracts in connection with the operational restructuring and business improvement efforts; (j) expenses incurred in connection with permitted acquisitions; (k) any impairment charges or write-offs of intangibles; and (l) any extraordinary, unusual or non-recurring charges, expenses or losses. Our Consolidated Senior Secured Net Leverage Ratio was negative at March 31, 2023.

In addition, the Credit Agreement and the indenture governing our senior notes (see Note 6, "Long-Term Debt" for additional information) contain certain limitations on our ability to pay dividends and other distributions, make certain acquisitions or investments, grant liens and sell assets, and the Credit Agreement contains certain limitations on our ability to incur indebtedness. The applicable covenants in the Credit Agreement affect our operating flexibility by, among other things, restricting our ability to incur expenses and indebtedness that could be used to grow the business, as well as to fund general corporate purposes. We were in compliance with the covenants in the Credit Agreement and the indenture governing our senior notes at March 31, 2023.

### ***Senior Notes***

On May 31, 2017, we issued \$950 million of 5.125% senior notes due June 1, 2025. The Company pays interest on the senior notes semi-annually in arrears on June 1 and December 1 of each year. The senior notes may be redeemed at 101.281% currently and at par as of June 1, 2023. The senior notes are guaranteed by the Subsidiary Guarantors. In August 2022, we conducted a cash tender offer to purchase up to \$600 million principal amount of the senior notes. The tender offer was oversubscribed and as such, \$600 million of the senior notes were accepted for prepayment and were prepaid in August 2022 with proceeds from the Transaction. We incurred a loss on the extinguishment of the senior notes of \$9.5 million in 2022 primarily representative of the early repayment premium and the write-off of unamortized debt issuance costs associated with the portion of the senior notes repaid.

### ***Use of Proceeds from the Transaction***

The Company generated gross proceeds from the sale of the U.S. physical auction business of approximately \$2.2 billion. The Transaction closed in May 2022. Under terms of the Credit Agreement, net cash proceeds from the Transaction were used to repay Term Loan B-6 within three days of the Transaction. The Company also prepaid \$600 million of the senior notes in August 2022. The terms of the senior notes specify that excess proceeds must be reinvested or used to pay down a portion of the senior notes. The Company is required to offer to redeem or repay approximately \$140 million of senior notes within 10 business days of May 10, 2023, subject to the terms of the indenture governing our senior notes.

### ***Liquidity***

At March 31, 2023, \$140.0 million of the remaining senior notes are classified as current debt, as the terms of the senior notes specify that excess proceeds must be reinvested or used to pay down a portion of the senior notes. As of March 31, 2023, \$65.0 million was drawn on the Revolving Credit Facility and is classified as current debt based on the Company's past practice of using the Revolving Credit Facility for short term borrowings. However, the terms of the Revolving Credit Facility do not require repayment until maturity at September 19, 2024.

At March 31, 2023, cash totaled \$219.6 million and there was an additional \$241.0 million available for borrowing under the Revolving Credit Facility (net of \$19.0 million in outstanding letters of credit). Funds held by our foreign subsidiaries could be repatriated, at which point state and local income tax expense and withholding tax expense would need to be recognized, net of any applicable foreign tax credits.

The Company's auction volumes have been adversely impacted by the supply chain disruptions and associated challenges in the automotive industry. We expect to see an improvement in the used vehicle market in the coming years, which is expected to increase the volume of vehicles entering our auction platforms and have a positive impact on our operating results. We believe our sources of liquidity from our cash and cash equivalents on hand, working capital, cash provided by operating activities, and availability under our Credit Facility are sufficient to meet our operating needs for the foreseeable future. In addition, we believe the previously mentioned sources of liquidity will be sufficient to fund our capital requirements and debt service payments for the foreseeable future. A lack of recovery in market conditions, or further deterioration in market conditions, could materially affect the Company's liquidity.

### ***Securitization Facilities***

AFC sells the majority of its U.S. dollar denominated finance receivables on a revolving basis and without recourse to AFC Funding Corporation. A securitization agreement allows for the revolving sale by AFC Funding Corporation to a group of bank purchasers of undivided interests in certain finance receivables subject to committed liquidity. The agreement expires on January 31, 2026. AFC Funding Corporation had committed liquidity of \$2.0 billion for U.S. finance receivables at March 31, 2023.

We also have an agreement for the securitization of AFCI's receivables, which expires on January 31, 2026. AFCI's committed facility is provided through a third-party conduit (separate from the U.S. facility) and was C\$300 million at March 31, 2023. In March 2023, AFCI entered into the Receivables Purchase Agreement (the "Canadian Receivables Purchase Agreement"). The Canadian Receivables Purchase Agreement increased AFCI's committed liquidity from C\$225 million to C\$300 million and the facility's maturity date remains January 31, 2026. In addition, provisions providing a mechanism for determining alternative rates of interest were added. We capitalized approximately \$0.5 million of costs in connection with the Canadian Receivables Purchase Agreement. The receivables sold pursuant to both the U.S. and Canadian securitization agreements are accounted for as secured borrowings.

AFC managed total finance receivables of \$2,406.4 million and \$2,416.6 million at March 31, 2023 and December 31, 2022, respectively. AFC's allowance for losses was \$21.0 million and \$21.5 million at March 31, 2023 and December 31, 2022, respectively.

As of March 31, 2023 and December 31, 2022, \$2,373.6 million and \$2,396.6 million, respectively, of finance receivables and a cash reserve of 1 or 3 percent of the obligations collateralized by finance receivables served as security for the \$1,638.2 million and \$1,677.6 million of obligations collateralized by finance receivables at March 31, 2023 and December 31, 2022, respectively. The amount of the cash reserve depends on circumstances which are set forth in the securitization agreements. There were unamortized securitization issuance costs of approximately \$18.3 million and \$19.4 million at March 31, 2023 and December 31, 2022, respectively. After the occurrence of a termination event, as defined in the U.S. securitization agreement, the banks may, and could, cause the stock of AFC Funding Corporation to be transferred to the bank facility, though as a practical matter the bank facility would look to the liquidation of the receivables under the transaction documents as their primary remedy.

Proceeds from the revolving sale of receivables to the bank facilities are used to fund new loans to customers. AFC, AFC Funding Corporation and AFCI must maintain certain financial covenants including, among others, limits on the amount of debt AFC and AFCI can incur, minimum levels of tangible net worth, and other covenants tied to the performance of the finance receivables portfolio. The securitization agreements also incorporate the financial covenants of our Credit Facility. At March 31, 2023, we were in compliance with the covenants in the securitization agreements.

### **EBITDA and Adjusted EBITDA**

EBITDA and Adjusted EBITDA, as presented herein, are supplemental measures of our performance that are not required by, or presented in accordance with, generally accepted accounting principles in the United States, or GAAP. They are not measurements of our financial performance under GAAP and should not be considered substitutes for net income (loss) or any other performance measures derived in accordance with GAAP.

EBITDA is defined as net income (loss), plus interest expense net of interest income, income tax provision (benefit), depreciation and amortization. Adjusted EBITDA is EBITDA adjusted for the items of income and expense and expected incremental revenue and cost savings, as described above in the discussion of certain restrictive loan covenants under "Credit Facilities."

Management believes that the inclusion of supplementary adjustments to EBITDA applied in presenting Adjusted EBITDA is appropriate to provide additional information to investors about one of the principal measures of performance used by our creditors. In addition, management uses EBITDA and Adjusted EBITDA to evaluate our performance. EBITDA and Adjusted EBITDA have limitations as analytical tools, and should not be considered in isolation or as a substitute for analysis of the results as reported under GAAP. These measures may not be comparable to similarly titled measures reported by other companies.

The following tables reconcile EBITDA and Adjusted EBITDA to income (loss) from continuing operations for the periods presented:

<i>(Dollars in millions)</i>	<b>Three Months Ended March 31, 2023</b>		
	<b>Marketplace</b>	<b>Finance</b>	<b>Consolidated</b>
<b>Income (loss) from continuing operations</b>	\$ (21.1)	\$ 33.8	\$ 12.7
Add back:			
Income taxes	(3.9)	11.2	7.3
Interest expense, net of interest income	7.1	30.3	37.4
Depreciation and amortization	21.2	1.8	23.0
Intercompany interest	6.4	(6.4)	—
<b>EBITDA</b>	<b>9.7</b>	<b>70.7</b>	<b>80.4</b>
Non-cash stock-based compensation	2.7	1.1	3.8
Acquisition related costs	0.3	—	0.3
Securitization interest	—	(27.8)	(27.8)
Severance	0.5	—	0.5
Foreign currency (gains)/losses	(0.1)	0.2	0.1
Net change in unrealized (gains) losses on investment securities	—	0.1	0.1
Professional fees related to business improvement efforts	0.6	0.1	0.7
Other	0.6	0.2	0.8
Total addbacks/(deductions)	4.6	(26.1)	(21.5)
<b>Adjusted EBITDA</b>	<b>\$ 14.3</b>	<b>\$ 44.6</b>	<b>\$ 58.9</b>

<i>(Dollars in millions)</i>	Three Months Ended March 31, 2022		
	Marketplace	Finance	Consolidated
<b>Income (loss) from continuing operations</b>	\$ (39.4)	\$ 31.0	\$ (8.4)
Add back:			
Income taxes	(15.1)	10.4	(4.7)
Interest expense, net of interest income	13.2	12.3	25.5
Depreciation and amortization	23.9	2.1	26.0
Intercompany interest	0.1	(0.1)	—
<b>EBITDA</b>	<b>(17.3)</b>	<b>55.7</b>	<b>38.4</b>
Non-cash stock-based compensation	4.4	0.8	5.2
Acquisition related costs	0.3	—	0.3
Securitization interest	—	(10.4)	(10.4)
(Gain)/Loss on asset sales	(0.1)	—	(0.1)
Severance	3.2	0.2	3.4
Foreign currency (gains)/losses	1.2	—	1.2
Net change in unrealized (gains) losses on investment securities	—	3.0	3.0
Professional fees related to business improvement efforts	7.3	0.8	8.1
Total addbacks/(deductions)	16.3	(5.6)	10.7
<b>Adjusted EBITDA</b>	<b>\$ (1.0)</b>	<b>\$ 50.1</b>	<b>\$ 49.1</b>

Certain of our loan covenant calculations utilize financial results for the most recent four consecutive fiscal quarters. The following table reconciles EBITDA and Adjusted EBITDA to net income (loss) for the periods presented:

<i>(Dollars in millions)</i>	Three Months Ended				Twelve Months Ended
	June 30, 2022	September 30, 2022	December 31, 2022	March 31, 2023	March 31, 2023
<b>Net income (loss)</b>	\$ 210.2	\$ (5.8)	\$ 37.1	\$ 12.7	\$ 254.2
Less: Income from discontinued operations	215.6	(6.3)	(4.8)	—	204.5
<b>Income (loss) from continuing operations</b>	(5.4)	0.5	41.9	12.7	49.7
Add back:					
Income taxes	(9.9)	6.7	17.9	7.3	22.0
Interest expense, net of interest income	25.2	30.9	34.9	37.4	128.4
Depreciation and amortization	25.9	24.3	24.0	23.0	97.2
<b>EBITDA</b>	35.8	62.4	118.7	80.4	297.3
Non-cash stock-based compensation	14.5	3.5	(5.7)	3.8	16.1
Loss on extinguishment of debt	7.7	9.3	0.2	—	17.2
Acquisition related costs	0.3	0.3	0.3	0.3	1.2
Securitization interest	(14.3)	(20.2)	(25.8)	(27.8)	(88.1)
Gain on sale of property	—	—	(33.9)	—	(33.9)
Severance	3.3	1.5	4.2	0.5	9.5
Foreign currency (gains)/losses	3.3	4.1	(6.1)	0.1	1.4
Net change in unrealized (gains) losses on investment securities	3.2	0.3	0.6	0.1	4.2
Professional fees related to business improvement efforts	0.8	3.2	3.1	0.7	7.8
Other	1.5	5.1	0.9	0.8	8.3
Total addbacks/(deductions)	20.3	7.1	(62.2)	(21.5)	(56.3)
<b>Adjusted EBITDA from continuing ops</b>	\$ 56.1	\$ 69.5	\$ 56.5	\$ 58.9	\$ 241.0

### Summary of Cash Flows

<i>(Dollars in millions)</i>	Three Months Ended March 31,	
	2023	2022
Net cash provided by (used by):		
Operating activities - continuing operations	\$ 96.1	\$ (22.6)
Operating activities - discontinued operations	—	(39.2)
Investing activities - continuing operations	(13.6)	(246.7)
Investing activities - discontinued operations	7.0	(11.8)
Financing activities - continuing operations	(116.5)	276.7
Financing activities - discontinued operations	—	22.0
Net change in cash balances of discontinued operations	—	(24.3)
Effect of exchange rate on cash	1.1	3.0
Net decrease in cash, cash equivalents and restricted cash	\$ (25.9)	\$ (42.9)

**Cash flow from operating activities (continuing operations)** Net cash provided by operating activities (continuing operations) was \$96.1 million for the three months ended March 31, 2023, compared with net cash used by operating activities of \$22.6 million for the three months ended March 31, 2022. Cash provided by continuing operations for the three months ended March 31, 2023 consisted primarily of cash earnings and an increase in accounts payable and accrued expenses, partially offset by an increase in trade receivables and other assets. Cash used by continuing operations for the three months ended March 31,



2022 consisted primarily of an increase in trade receivables and other assets as well as payments of contingent consideration in excess of acquisition-date fair value, partially offset by cash earnings and an increase in accounts payable and accrued expenses. The increase in operating cash flow was primarily attributable to changes in operating assets and liabilities as a result of the timing of collections and the disbursement of funds to consignors for marketplace sales held near period-ends, as well as a decrease in payments of contingent consideration in excess of acquisition-date fair value.

Changes in AFC's accounts payable balance are presented in cash flows from operating activities while changes in AFC's finance receivables are presented in cash flows from investing activities. Changes in these balances can cause variations in operating and investing cash flows.

**Cash flow from investing activities (continuing operations)** Net cash used by investing activities (continuing operations) was \$13.6 million for the three months ended March 31, 2023, compared with \$246.7 million for the three months ended March 31, 2022. The cash used by investing activities for the three months ended March 31, 2023 was primarily from purchases of property and equipment and an increase in finance receivables held for investment. The cash used by investing activities for the three months ended March 31, 2022 was primarily due to an increase in finance receivables held for investments and purchases of property and equipment.

**Cash flow from financing activities (continuing operations)** Net cash used by financing activities (continuing operations) was \$116.5 million for the three months ended March 31, 2023, compared with net cash provided by financing activities of \$276.7 million for the three months ended March 31, 2022. The cash used by financing activities for the three months ended March 31, 2023 was primarily due to a decrease in borrowings from lines of credit, a decrease in obligations collateralized by finance receivables and dividends paid on the Series A Preferred Stock. The cash provided by financing activities for the three months ended March 31, 2022 was primarily due to an increase in obligations collateralized by finance receivables and an increase in borrowings from lines of credit.

**Cash flow from operating activities (discontinued operations)** There were no operating activities (discontinued operations) for the three months ended March 31, 2023, compared with net cash used by operating activities of \$39.2 million for the three months ended March 31, 2022. The cash used by operating activities for the three months ended March 31, 2022 primarily consisted of an increase in trade receivables and other assets, partially offset by cash earnings and an increase in accounts payable and accrued expenses.

**Cash flow from investing activities (discontinued operations)** Net cash provided by investing activities (discontinued operations) was \$7.0 million for the three months ended March 31, 2023, compared with net cash used by investing activities of \$11.8 million for the three months ended March 31, 2022. The cash provided by investing activities for the three months ended March 31, 2023 is attributable to the final proceeds from the sale of the ADESA U.S. physical auction business. The cash used by investing activities for the three months ended March 31, 2022 is primarily attributed to purchases of property and equipment.

**Cash flow from financing activities (discontinued operations)** There were no financing activities (discontinued operations) for the three months ended March 31, 2023, compared with net cash provided by financing activities of \$22.0 million for the three months ended March 31, 2022. The cash provided by financing activities for the three months ended March 31, 2022 is primarily attributable to a net increase in book overdrafts.

### **Capital Expenditures**

Capital expenditures for the three months ended March 31, 2023 and 2022 approximated \$12.0 million and \$13.5 million, respectively. Capital expenditures were funded from internally generated funds. We continue to invest in our core information technology capabilities and our service locations. Capital expenditures related to continuing operations are expected to be approximately \$65 million for fiscal year 2023. Future capital expenditures could vary substantially based on capital project timing, capital expenditures related to acquired businesses and the initiation of new information systems projects to support our business strategies.

## **Dividends**

The Series A Preferred Stock ranks senior to the shares of the Company's common stock, par value \$0.01 per share, with respect to dividend rights and rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company. The holders of the Series A Preferred Stock are entitled to a cumulative dividend at the rate of 7% per annum, payable quarterly in arrears. Dividends were payable in kind through the issuance of additional shares of Series A Preferred Stock for the first eight dividend payments (through June 30, 2022), and thereafter, in cash or in kind, or in any combination of both, at the option of the Company. For the three months ended March 31, 2023, the holders of the Series A Preferred Stock received cash dividends aggregating \$11.1 million and for the three months ended March 31, 2022, the holders of the Series A Preferred Stock received dividends in kind with a value in the aggregate of approximately \$10.7 million. The holders of the Series A Preferred Stock are also entitled to participate in dividends declared or paid on our common stock on an as-converted basis.

The Company has suspended its quarterly common stock dividend. Future dividend decisions will be based on and affected by a variety of factors, including our financial condition and results of operations, contractual restrictions, including restrictive covenants contained in our Credit Agreement and AFC's securitization facilities and the indenture governing our senior notes, capital requirements and other factors that our board of directors deems relevant. No assurance can be given as to whether any future dividends may be declared by our board of directors or the amount thereof.

## **Contractual Obligations**

The Company's contractual cash obligations for long-term debt, interest payments related to long-term debt, finance lease obligations, operating leases and contingent consideration related to acquisitions are summarized in the table of contractual obligations in our Annual Report on Form 10-K for the year ended December 31, 2022. Since December 31, 2022, the contractual obligations of the Company have changed as follows:

- Operating lease obligations change in the ordinary course of business. We lease most of our facilities, as well as other property and equipment under operating leases. Future operating lease obligations will continue to change if renewal options are exercised and/or if we enter into additional operating lease agreements.

See Note 6 to the Consolidated Financial Statements, included elsewhere in this Quarterly Report on Form 10-Q, for additional information about the items described above. Our contractual cash obligations as of December 31, 2022, are discussed in the "Contractual Obligations" section of "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Part II, Item 7 of our Annual Report on Form 10-K for the year ended December 31, 2022, as filed with the Securities and Exchange Commission (the "SEC").

## **Critical Accounting Estimates**

Our critical accounting estimates are discussed in the "Critical Accounting Estimates" section of "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Part II, Item 7 of our Annual Report on Form 10-K for the year ended December 31, 2022, as filed with the SEC. A summary of significant accounting policies is discussed in Note 2 and elsewhere in the Notes to the Consolidated Financial Statements included in our Annual Report on Form 10-K for the year ended December 31, 2022, which includes audited financial statements.

## **Off-Balance Sheet Arrangements**

As of March 31, 2023, we had no off-balance sheet arrangements pursuant to Item 303 of Regulation S-K under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), that we believe are reasonably likely to have a current or future effect on our financial condition, results of operations, or cash flows.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk**

#### **Foreign Currency**

Our foreign currency exposure is limited and arises from transactions denominated in foreign currencies, particularly intercompany loans, as well as from translation of the results of operations from our Canadian and, to a lesser extent, United Kingdom and Continental Europe subsidiaries. However, fluctuations between U.S. and non-U.S. currency values may adversely affect our results of operations and financial position. We have not entered into any foreign exchange contracts to hedge changes in the Canadian dollar, British pound or euro. Foreign currency losses on intercompany loans were approximately \$0.1 million and \$1.2 million for the three months ended March 31, 2023 and 2022, respectively. Canadian currency translation negatively affected net income by approximately \$1.0 million for the three months ended March 31, 2023 and had no impact on net income for the three months ended March 31, 2022. A 1% change in the month-end Canadian dollar exchange rate for March 31, 2023 would have impacted foreign currency losses on intercompany loans by \$0.8 million and net income by \$0.5 million. A 1% change in the month-end euro exchange rate for March 31, 2023 would have impacted foreign currency losses on intercompany loans by \$0.7 million and net income by \$0.5 million. A 1% change in the average Canadian dollar exchange rate for the three months ended March 31, 2023 would have impacted net income by approximately \$0.2 million. Currency exposure of our U.K. and European operations is not material to the results of operations.

#### **Interest Rates**

We are exposed to interest rate risk on our variable rate borrowings. Accordingly, interest rate fluctuations affect the amount of interest expense we are obligated to pay. We most recently used interest rate swap agreements to manage our exposure to interest rate changes. We originally designated the interest rate swaps as cash flow hedges for accounting purposes. Accordingly, the earnings impact of the derivatives designated as cash flow hedges are recorded upon the recognition of the interest related to the hedged debt.

In January 2020, we entered into three pay-fixed interest rate swaps with an aggregate notional amount of \$500 million to swap variable rate interest payments under our term loan for fixed interest payments bearing a weighted average interest rate of 1.44%. The interest rate swaps had a five-year term, each maturing on January 23, 2025.

In February 2022, we discontinued hedge accounting as we concluded that the forecasted interest rate payments were no longer probable of occurring in consideration of the Transaction and expected repayment of Term Loan B-6. In connection with the repayment of Term Loan B-6 in May 2022, we entered into swap termination agreements. We received \$16.7 million to settle and terminate the swaps, which was recognized as a realized gain in "Interest expense" in the consolidated statement of income for the three and six months ended June 30, 2022.

A sensitivity analysis of the impact on our variable rate corporate debt instruments to a hypothetical 100 basis point increase in short-term rates (LIBOR) for the three months ended March 31, 2023 would have resulted in an increase in interest expense of approximately \$0.3 million.

#### **Item 4. Controls and Procedures**

##### **Evaluation of Disclosure Controls and Procedures**

As of the end of the period covered by this Quarterly Report on Form 10-Q, we carried out an evaluation under the supervision and with the participation of our management, including the Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures as defined in Exchange Act Rules 13a-15(e) and 15d-15(e). Based upon that evaluation, the Chief Executive Officer and the Chief Financial Officer concluded that our disclosure controls and procedures were effective.

##### **Remediation of Material Weakness**

During the quarter ended December 31, 2022, we identified a material weakness in certain internal controls over financial reporting related to ineffective process level controls over the review of the statement of cash flows as it relates to operating cash flows related to discontinued operations and operating and financing cash flows related to contingent consideration paid resulting from ineffective risk assessment associated with changes in our business operations related to the acquisition and disposition of businesses. To address this material weakness in internal control over financial reporting, management has performed an appropriate risk assessment over cash flow presentation, which includes assessment of controls designed to identify all accounts and transactions impacting the classification of cash flows related to the acquisition and disposition of businesses to ensure that the presentation in the statement of cash flows of transactions that do not relate to normal operations are complete and accurate. During the quarter ended March 31, 2023, the Company successfully completed the testing necessary to conclude that the material weakness has been remediated.

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

Except for the changes related to the Company's remediation efforts described above, there has been no change in our internal control over financial reporting, as defined in Exchange Act Rules 13a-15(f) and 15d-15(f), during the quarter ended March 31, 2023, that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

**PART II  
OTHER INFORMATION**

**Item 1. Legal Proceedings**

We are involved in litigation and disputes arising in the ordinary course of business. Although the outcome of litigation cannot be accurately predicted, based on evaluation of information presently available, our management does not currently believe that the ultimate resolution of these actions will have a material adverse effect on our financial condition, results of operations or cash flows.

Certain legal proceedings in which the Company is involved are discussed in Note 19 to the consolidated financial statements in Part II, Item 8 of our Annual Report on Form 10-K for the year ended December 31, 2022 and Part I, Item 3 of the same Annual Report. Unless otherwise indicated therein, all proceedings discussed in the Annual Report remain outstanding.

**Item 1A. Risk Factors**

Before deciding to invest in our Company, in addition to the other information contained in our Annual Report on Form 10-K and other information set forth in this Quarterly Report on Form 10-Q, you should carefully consider the factors discussed in Part I, "Item 1A. Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2022, which could materially and adversely affect our business, financial condition, prospects, results of operations and cash flows. In such case, the trading price of our common stock could decline and you could lose all or part of your investment. The risks described in our most recent Annual Report on Form 10-K, including our ability to access capital and macroeconomic conditions and geopolitical events, are not the only risks we face. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also materially affect our business, financial condition, results of operations and prospects.

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

**Unregistered Sales of Equity Securities**

The information required by Item 701 of Regulation S-K was previously disclosed (for the sale of Series A Preferred Stock) in the Company's Current Reports on Form 8-K, filed with the SEC on June 10, 2020 and June 30, 2020.

On November 12, 2020, we issued 857,630 shares of our common stock to three individuals and one trust in connection with the BacklotCars acquisition in the fourth quarter of 2020. We received \$15 million as consideration for the sale of such securities. On October 14, 2021, we issued 1,953,124 shares of our common stock to two individuals and one trust in connection with the CARWAVE acquisition in the fourth quarter of 2021. We received \$30 million as consideration for the sale of such securities. The issuance of these securities was exempt from registration under the Securities Act, in reliance upon Section 4(a)(2) of the Securities Act as transactions by an issuer not involving any public offering and/or the private offering safe harbor provision of Rule 506 of Regulation D promulgated under the Securities Act.

**Issuer Purchases of Equity Securities**

The following table provides information about purchases by KAR Auction Services of its shares of common stock during the quarter ended March 31, 2023:

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs (1) <i>(Dollars in millions)</i>
January 1 - January 31	—	\$ —	—	\$ 126.9
February 1 - February 28	—	—	—	126.9
March 1 - March 31	—	—	—	126.9
<b>Total</b>	<b>—</b>	<b>\$ —</b>	<b>—</b>	

- (1) In October 2019, the board of directors authorized a repurchase of up to \$300 million of the Company's outstanding common stock, par value \$0.01 per share, through October 30, 2021. In October 2021, the board of directors authorized an extension of the Company's share repurchase program through December 31, 2022. On April 27, 2022, the board of directors authorized an increase in the size of the Company's \$300 million share repurchase program by an additional \$200 million and an extension of the share repurchase program through December 31, 2023. Repurchases may be made in

the open market or through privately negotiated transactions, in accordance with applicable securities laws and regulations, including pursuant to repurchase plans designed to comply with Rule 10b5-1 of the Securities Exchange Act of 1934, as amended. The timing and amount of any repurchases is subject to market and other conditions.

**Item 6. Exhibits, Financial Statement Schedules**

a) Exhibits—the exhibit index below is incorporated herein by reference as the list of exhibits required as part of this report.

In reviewing the agreements included as exhibits to this report, please remember they are included to provide you with information regarding their terms and are not intended to provide any other factual or disclosure information about the Company and its subsidiaries or other parties to the agreements.

The agreements included or incorporated by reference as exhibits to this report contain representations and warranties by each of the parties to the applicable agreement. These representations and warranties were made solely for the benefit of the other parties to the applicable agreement and (i) were not intended to be treated as categorical statements of fact, but rather as a way of allocating the risk to one of the parties if those statements prove to be inaccurate; (ii) may have been qualified in such agreement by disclosures that were made to the other party in connection with the negotiation of the applicable agreement; (iii) may apply contract standards of "materiality" that are different from "materiality" under the applicable securities laws; and (iv) were made only as of the date of the applicable agreement or such other date or dates as may be specified in the agreement.

Accordingly, these representations and warranties may not describe the actual state of affairs as of the date they were made or at any other time. Additional information about the Company may be found elsewhere in this report and the Company's other public filings, which are available without charge through the SEC's website at <http://www.sec.gov>.

**EXHIBIT INDEX**

Exhibit No.	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
2.1 +	<a href="#">Separation and Distribution Agreement, dated as of June 27, 2019, by and between KAR Auction Services, Inc. and IAA, Inc.</a>	8-K	001-34568	2.1	6/28/2019	
2.2	<a href="#">Agreement and Plan of Merger dated as of September 4, 2020 by and among ADESA, Inc., Showroom Merger Sub, Inc., KAR Auction Services, Inc., BacklotCars, Inc. and Shareholder Representative Services LLC, as the securityholders representative</a>	8-K	001-34568	2.1	9/8/2020	
2.3	<a href="#">Securities Purchase Agreement, by and among ADESA, Inc., Carwave Holdings LLC, KKR Chevy Aggregator L.P., John Lauer, William Lauer, Joseph Lauer, Lauer Holdings Inc., KKR Chevy Blocker, LLC, KKR-Milton Strategic Partners L.P., KKR DAF Private Assets Fund Designated Activity Company, KKR NGT II (Chevy) Blocker L.P. and KKR NGT II (Chevy) Blocker Parent L.P.</a>	8-K	001-34568	2.1	8/23/2021	
2.4	<a href="#">Securities and Asset Purchase Agreement, dated as of February 24, 2022, by and among KAR Auction Services, Inc., Carvana Group, LLC and Carvana Co. solely for purposes of Section 10.15 thereof as guarantor</a>	8-K	001-34568	2.1	2/24/2022	
3.1	<a href="#">Amended and Restated Certificate of Incorporation of KAR Auction Services, Inc.</a>	10-Q	001-34568	3.1	8/3/2016	
3.2	<a href="#">Second Amended and Restated By-Laws of KAR Auction Services, Inc.</a>	8-K	001-34568	3.1	11/4/2014	
3.3	<a href="#">Certificate of Designations Designating the Series A Convertible Preferred Stock</a>	8-K	001-34568	3.1	6/10/2020	
4.1	<a href="#">Indenture, dated as of May 31, 2017, among KAR Auction Services, Inc., the guarantors party thereto and U.S. Bank National Association, as trustee, including the form of the Notes</a>	8-K	001-34568	4.1	5/31/2017	

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Exhibit No.	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
4.2	<a href="#">Form of common stock certificate</a>	S-1/A	333-161907	4.15	12/10/2009	
4.3	<a href="#">Description of the Company's securities</a>	10-K	001-34568	4.3	2/19/2020	
10.1a	<a href="#">Amendment and Restatement Agreement, dated March 11, 2014, among KAR Auction Services, Inc. and certain of its subsidiaries and JPMorgan Chase Bank, N.A., as administrative agent, swingline lender and issuing lender (the Amended and Restated Credit Agreement and the Amended and Restated Guarantee and Collateral Agreement are included as Exhibits A and B thereto, respectively)</a>	8-K	001-34568	10.1	3/12/2014	
10.1b	<a href="#">Incremental Commitment Agreement and First Amendment, dated as of March 9, 2016, among KAR Auction Services, Inc., JPMorgan Chase Bank, N.A., as administrative agent, certain subsidiaries of the Company party thereto and the several lenders party thereto</a>	8-K	001-34568	10.1	3/9/2016	
10.1c	<a href="#">Incremental Commitment Agreement and Second Amendment, dated as of May 31, 2017, among KAR Auction Services, Inc., JPMorgan Chase Bank, N.A., as administrative agent, the guarantors party thereto and the several lenders party thereto</a>	8-K	001-34568	10.1	5/31/2017	
10.1d	<a href="#">Third Amendment Agreement, dated as of September 19, 2019, by and among KAR Auction Services, Inc., JPMorgan Chase Bank, N.A., as administrative agent, certain subsidiaries of KAR Auction Services, Inc. party thereto and the several lenders party thereto</a>	8-K	001-34568	10.1	9/20/2019	
10.1e	<a href="#">Technical Amendment, dated as of May 28, 2020, by and between KAR Auction Services, Inc., and JPMorgan Chase Bank, N.A., as administrative agent</a>	10-K	001-34568	10.1e	2/18/2021	
10.1f	<a href="#">Fourth Amendment Agreement, dated as of May 29, 2020, by and among KAR Auction Services, Inc., JPMorgan Chase Bank, N.A., as administrative agent, certain subsidiaries of the Company party thereto and the certain revolving lenders party thereto</a>	8-K	001-34568	10.1	6/1/2020	
10.1g	<a href="#">Fifth Amendment Agreement, dated September 2, 2020, by and among KAR Auction Services, Inc., JPMorgan Chase Bank, N.A., as administrative agent, certain subsidiaries of KAR Auction Services, Inc. party thereto and the certain revolving lenders party thereto</a>	8-K	001-34568	10.1	9/8/2020	
10.2 *	<a href="#">Employment Agreement, dated March 1, 2021, between KAR Auction Services, Inc. and James P. Hallett</a>	8-K	001-34568	10.1	3/2/2021	
10.3a *	<a href="#">Employment Agreement, dated March 9, 2020, between KAR Auction Services, Inc. and Eric M. Loughmiller</a>	8-K	001-34568	10.2	3/13/2020	
10.3b *	<a href="#">Letter Agreement, dated January 1, 2023, between KAR Auction Services, Inc. and Eric M. Loughmiller</a>	10-K	001-34568	10.3b	3/9/2023	
10.4 *	<a href="#">Employment Agreement, dated March 9, 2020, between KAR Auction Services, Inc. and John C. Hammer</a>	8-K	001-34568	10.1	3/13/2020	
10.5a *	<a href="#">Employment Agreement, dated March 9, 2020, between KAR Auction Services, Inc. and Peter J. Kelly</a>	10-Q	001-34568	10.9	5/7/2020	

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Exhibit No.	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	File No.	Exhibit	
10.5b *	<a href="#">Amendment No. 1 to Employment Agreement, dated March 1, 2021, between KAR Auction Services Inc. and Peter J. Kelly</a>	8-K	001-34568	10.2	3/2/2021
10.6 *	<a href="#">Employment Agreement, dated April 17, 2023, between KAR Auction Services, Inc. and Brad S. Lakhia</a>	8-K	001-34568	10.1	4/17/2023
10.7 *	<a href="#">Employment Agreement, dated October 26, 2021, between KAR Auction Services, Inc. and James Coyle</a>	10-K	001-34568	10.6	2/23/2022
10.8a *	<a href="#">Employment Agreement, dated March 9, 2020, between KAR Auction Services, Inc. and Sriram Subrahmanyam</a>	10-K	001-34568	10.7a	3/9/2023
10.8b *	<a href="#">Amendment No. 1 to Employment Agreement, dated May 9, 2022, between KAR Auction Services, Inc. and Sriram Subrahmanyam</a>	10-K	001-34568	10.7b	3/9/2023
10.9a *	<a href="#">Employment Agreement, dated March 9, 2020, between KAR Auction Services, Inc. and Thomas J. Fisher</a>	10-K	001-34568	10.6	2/18/2021
10.9b *	<a href="#">Engagement Letter, dated August 1, 2022, between KAR Auction Services, Inc. and Tack Iron, LLC (Thomas J. Fisher)</a>	10-K	001-34568	10.8b	3/9/2023
10.10 *	<a href="#">KAR Auction Services, Inc. Annual Incentive Program Summary of Terms 2022</a>	10-K	001-34568	10.8	2/23/2022
10.11 *	<a href="#">KAR Auction Services, Inc. Annual Incentive Program Summary of Terms 2023</a>	10-K	001-34568	10.10	3/9/2023
10.12a ^	<a href="#">Amended and Restated Purchase and Sale Agreement, dated May 31, 2002, between AFC Funding Corporation and Automotive Finance Corporation</a>	S-4	333-148847	10.32	1/25/2008
10.12b	<a href="#">Amendment No. 1 to Amended and Restated Purchase and Sale Agreement, dated June 15, 2004</a>	S-4	333-148847	10.33	1/25/2008
10.12c	<a href="#">Amendment No. 2 to Amended and Restated Purchase and Sale Agreement, dated January 18, 2007</a>	S-4	333-148847	10.34	1/25/2008
10.12d ^	<a href="#">Amendment No. 3 to Amended and Restated Purchase and Sale Agreement, dated April 20, 2007</a>	S-4	333-148847	10.35	1/25/2008
10.12e	<a href="#">Amendment No. 4 to Amended and Restated Purchase and Sale Agreement, dated January 30, 2009</a>	10-K	001-34568	10.19e	2/28/2012
10.12f	<a href="#">Amendment No. 5 to Amended and Restated Purchase and Sale Agreement, dated April 25, 2011</a>	10-K	001-34568	10.19f	2/28/2012
10.13 +	<a href="#">Tenth Amended and Restated Receivables Purchase Agreement, dated September 28, 2022, by and among Automotive Finance Corporation, AFC Funding Corporation, Fairway Finance Company, LLC, Fifth Third Bank, National Association, Chariot Funding LLC, PNC Bank, National Association, Thunder Bay Funding, LLC, Truist Bank, BMO Capital Markets Corp., JPMorgan Chase Bank, N.A., Royal Bank of Canada and Bank of Montreal</a>	10-Q	001-34568	10.11	11/2/2022
10.14 +	<a href="#">Receivables Purchase Agreement, dated March 1, 2023, between Automotive Finance Canada Inc., KAR Auction Services, Inc., Computershare Trust Company of Canada, the Agents Parties to the Loan Agreement and BMO Nesbitt Burns Inc.</a>				X



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Exhibit No.	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
10.15	<a href="#">Form of Indemnification Agreement</a>	8-K	001-34568	10.1	12/17/2013	
10.16a *	<a href="#">KAR Auction Services, Inc. 2009 Omnibus Stock and Incentive Plan, as Amended June 10, 2014</a>	DEF 14A	001-34568	Appendix A	4/29/2014	
10.16b *	<a href="#">First Amendment to the KAR Auction Services, Inc. 2009 Omnibus Stock and Incentive Plan</a>	10-K	001-34568	10.24b	2/18/2016	
10.16c *	<a href="#">KAR Auction Services, Inc. Amended and Restated 2009 Omnibus Stock and Incentive Plan, as Amended and Restated June 4, 2021</a>	DEF 14A	001-34568	Annex I	4/23/2021	
10.17 *	<a href="#">KAR Auction Services, Inc. Amended and Restated Employee Stock Purchase Plan</a>	10-Q	001-34568	10.27	8/5/2020	
10.18a *	<a href="#">KAR Auction Services, Inc. Directors Deferred Compensation Plan, effective December 10, 2009</a>	10-Q	001-34568	10.62	8/4/2010	
10.18b *	<a href="#">Amendment No. 1 to the KAR Auction Services, Inc. Directors Deferred Compensation Plan, dated as of June 28, 2019</a>	10-Q	001-34568	10.28b	11/6/2019	
10.19 *	<a href="#">Director Restricted Share Agreement</a>	10-Q	001-34568	10.29	8/7/2019	
10.20 *	<a href="#">Form of Nonqualified Stock Option Agreement</a>	S-1/A	333-161907	10.65	12/4/2009	
10.21 *	<a href="#">Form of 2019 Restricted Stock Unit Award Agreement for Section 16 Officers</a>	10-K	001-34568	10.35	2/21/2019	
10.22 *	<a href="#">Form of 2020 Restricted Stock Unit Award Agreement for Section 16 Officers</a>	10-K	001-34568	10.35	2/19/2020	
10.23 *	<a href="#">Form of 2022 Restricted Stock Unit Award Agreement</a>	10-K	001-34568	10.22	3/9/2023	
10.24 *	<a href="#">Form of Non-Qualified Stock Option Award Agreement</a>	10-K	001-34568	10.30	2/18/2021	
10.25 *	<a href="#">Form of 2019 Performance-Based Restricted Stock Unit Agreement (Cumulative Operating Adjusted Net Income Per Share)</a>	10-K	001-34568	10.38	2/24/2017	
10.26 *	<a href="#">Form of 2020, 2021 and 2022 Performance-Based Restricted Stock Unit Agreement (Cumulative Operating Adjusted Net Income Per Share)</a>	10-K	001-34568	10.38	2/19/2020	
10.27 *	<a href="#">Form of 2022 Amended and Restated Performance-Based Restricted Stock Unit Agreement (Cumulative Adjusted EBITDA)</a>	10-Q	001-34568	10.25	11/2/2022	
10.28 *	<a href="#">Form of 2023 Performance-Based Restricted Stock Unit Agreement (Cumulative Adjusted EBITDA and Relative Total Shareholder Return)</a>	10-K	001-34568	10.27	3/9/2023	
10.29	<a href="#">Transition Services Agreement, dated as of June 27, 2019, by and between KAR Auction Services, Inc. and IAA, Inc.</a>	8-K	001-34568	10.1	6/28/2019	
10.30	<a href="#">Tax Matters Agreement, dated as of June 27, 2019, by and between KAR Auction Services, Inc. and IAA, Inc.</a>	8-K	001-34568	10.2	6/28/2019	
10.31	<a href="#">Employee Matters Agreement, dated as of June 27, 2019, by and between KAR Auction Services, Inc. and IAA, Inc.</a>	8-K	001-34568	10.3	6/28/2019	
10.32	<a href="#">Investment Agreement, dated as of May 26, 2020, by and between KAR Auction Services, Inc. and Ignition Parent LP</a>	8-K	001-34568	10.1	5/27/2020	

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Exhibit No.	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
10.33a	<a href="#">Investment Agreement, dated as of May 26, 2020, by and between KAR Auction Services, Inc. and Periphos Capital GP, LLC</a>	8-K	001-34568	10.2	5/27/2020	
10.33b	<a href="#">Assignment and Assumption Agreement, dated as of June 9, 2020, by and between Periphos Capital GP, LLC and Periphos Kanga Holdings, L.P.</a>	10-K	001-34568	10.37b	2/18/2021	
10.34	<a href="#">Registration Rights Agreement, dated as of June 10, 2020, by and among KAR Auction Services, Inc. and Ignition Parent LP</a>	8-K	001-34568	10.1	6/10/2020	
10.35	<a href="#">Registration Rights Agreement, dated as of June 29, 2020, by and between KAR Auction Services, Inc. and Periphos Kanga Holdings, LP</a>	8-K	001-34568	10.1	6/29/2020	
31.1	<a href="#">Certification of Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>					X
31.2	<a href="#">Certification of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>					X
32.1	<a href="#">Certification of Chief Executive Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>					X
32.2	<a href="#">Certification of Chief Financial Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>					X
101	The following materials from KAR Auction Services, Inc.'s Quarterly Report on Form 10-Q for the quarter ended March 31, 2023 formatted in iXBRL (Inline Extensible Business Reporting Language): (i) the Consolidated Statements of Income for the three months ended March 31, 2023 and 2022; (ii) the Consolidated Statements of Comprehensive Income for the three months ended March 31, 2023 and 2022 (iii) the Consolidated Balance Sheets as of March 31, 2023 and December 31, 2022; (iv) the Consolidated Statements of Stockholders' Equity for the three months ended March 31, 2023 and 2022; (v) the Consolidated Statements of Cash Flows for the three months ended March 31, 2023 and 2022; and (vi) the Condensed Notes to Consolidated Financial Statements.					X
104	Cover page Interactive Data File, formatted in iXBRL (contained in Exhibit 101).					X

+ Certain information has been excluded from this exhibit because it is not material and would likely cause competitive harm to the registrant if publicly disclosed.

^ Portions of this exhibit have been redacted pursuant to a request for confidential treatment filed separately with the Secretary of the Securities and Exchange Commission pursuant to Rule 406 under the Securities Act of 1933, as amended.

\* Denotes management contract or compensation plan, contract or arrangement.

**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

KAR Auction Services, Inc.  
(Registrant)

Date: May 3, 2023

/s/ BRAD S. LAKHIA  
Brad S. Lakhia  
*Executive Vice President and Chief Financial Officer*  
(Duly Authorized Officer and Principal Financial Officer)

CERTAIN INFORMATION HAS BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE IT IS BOTH NOT MATERIAL AND IS THE TYPE OF INFORMATION THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.  
[\*\*] INDICATES THAT INFORMATION HAS BEEN REDACTED.

Execution Version

**RECEIVABLES PURCHASE AGREEMENT**

**BETWEEN**

**AUTOMOTIVE FINANCE CANADA INC.,**  
as Seller and Servicer

- and -

**KAR AUCTION SERVICES, INC.,**  
as Performance Guarantor

- and -

**COMPUTERSHARE TRUST COMPANY OF CANADA,**  
as trustee of **AFCI FUNDING TRUST,**  
as Purchaser

- and -

**THE AGENTS PARTIES  
TO THE LOAN AGREEMENT**

- and -

**BMO NESBITT BURNS INC.,**  
as Financial Services Agent

Dated as of March 1, 2023

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## RECEIVABLES PURCHASE AGREEMENT

MEMORANDUM OF AGREEMENT dated as of March 1, 2023.

B E T W E E N:

**AUTOMOTIVE FINANCE CANADA INC.**,  
a corporation incorporated under the laws of the Province of Ontario,

(hereinafter referred to as the “**Seller**” and the initial “**Servicer**”),

- and -

**KAR AUCTION SERVICES, INC.**,  
a corporation incorporated **under** the laws of Delaware,

(hereinafter referred to as the “**Performance Guarantor**” or “**KAR**”),

- and -

**COMPUTERSHARE TRUST COMPANY OF CANADA**,  
a trust company incorporated under the laws of Canada and licensed to carry on business as a trustee in each of the provinces of Canada, in its capacity as trustee of **AFCI FUNDING TRUST**, a trust established pursuant to the laws of the Province of Ontario,

(as “**Purchaser**”, hereinafter referred to as the “**Trust**”),

- and -

The **AGENTS** for the Lender Groups from time to time parties to the Loan Agreement,

(each such party, together with their respective successors in such capacity, hereinafter referred to as an “**Agent**”),

- and -

**BMO NESBITT BURNS INC.**, in its capacity as Financial Services Agent,

(hereinafter referred to as the “**Financial Services Agent**”),

WHEREAS the Seller desires to sell to the Trust from time to time and the Trust wishes to purchase from the Seller, an undivided co-ownership interest in the Seller’s present and future Receivables and the Related Security related thereto on a fully serviced basis;

AND WHEREAS the Performance Guarantor has agreed to guarantee the obligations of the Servicer under this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the covenants and agreements of the parties herein contained and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties), the parties hereby covenant and agree as follows:

### ARTICLE 1 INTERPRETATION

#### 1.1 Definitions

Capitalized terms used and not otherwise defined in this Agreement have the meanings specified in the Loan Agreement. In addition, in this Agreement, unless the context requires otherwise, the following terms shall have the following meanings:



“**Adjusted Net Spread**” means the annualized percentage equivalent of a fraction (computed as of the last day of each calendar month), the numerator of which is the excess of (x) all Finance Charge and Floorplan Fee Collections and any recoveries of Defaulted Receivables received and applied during such calendar month over (y) the sum of, without duplication, (i) the Carry Costs for such calendar month, (ii) the aggregate amount of Receivables that became Defaulted Receivables during such calendar month, and (iii) the aggregate amount of non-cash adjustments that reduced the Principal Balance of any Pool Receivable during such calendar month (but excluding any Receivable that was included in the calculation of Net Spread pursuant to clause (ii) above in any previous calendar month); and the denominator of which is the average aggregate Principal Balances of the Pool Receivables during such calendar month;

“**Administration Agreement**” means the administration agreement, dated as of the date hereof, between the Trust, the Administrative Agent, and the Financial Services Agent, as amended, restated, supplemented or otherwise modified from time to time;

“**Administrative Agent**” means, the Seller, in its capacity as Administrative Agent of the Trust;

“**AFC**” means Automotive Finance Corporation, an Indiana corporation;

“**Affected Person**” has the meaning ascribed thereto in Section 10.2(b);

“**Affiliate**” means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or is a director or officer of such Person;

“**Agreement**” means this agreement as amended, restated, supplemented or otherwise modified from time to time;

“**All-Terrain Vehicles**” includes [\*\*];

“**Auction Credit**” means a Receivable pursuant to which a wholesale auction has granted credit for the purpose of a float sale agreement with dealers, provided that the wholesale auction shall be the “Obligor” of such Receivable and shall be subject to the Normal Concentration Percentage and the Special Concentration Percentage, as applicable;

“**Available Tenor**” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (a) 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 a Collection Period or (b) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date;

“**Backup Servicer**” means Wells Fargo Bank, National Association, and any other backup servicer subsequently appointed pursuant to the terms of the Backup Servicing Agreement;

“**Backup Servicing Agreement**” means (i) the backup servicing agreement dated as of the date hereof between Wells Fargo Bank, National Association, the Servicer, the Trust, the Agents and the Financial Services Agent; and (ii) any replacement backup servicing agreement entered into from time to time with the prior written consent of the Trust, the Agents and the Financial Services Agent, in each case as such agreements may be amended, supplemented or otherwise modified from time to time in accordance with the terms hereof;

“**Backup Servicing Fee Letter**” means (i) the Backup Servicing Agreement, setting forth the Backup Servicing Fees payable to the Backup Servicer and (ii) any replacement backup servicing fee letter entered into from time to time with the prior written consent of the Trust and the Financial Services Agent, in each case as such letters may be amended, supplemented or otherwise modified from time to time in accordance with the terms hereof;

“**Backup Servicing Fees**” means all fees and reimbursable expenses (excluding Transition Expenses) payable pursuant to the Backup Servicing Agreement or the Backup Servicing Fee Letter (for the avoidance of doubt, prior to the Backup Servicer assuming the role of Servicer);

“**Benchmark**” means, initially, CDOR for an Available Tenor of three months; provided that if a replacement of the Benchmark has occurred pursuant to Section 1.10, 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, for any Available Tenor:

- (a) for purposes of Section 1.10, the first alternative set forth below that can be determined by the Financial Services Agent:
  - (i) the sum of: (x) Term CORRA and (y) [\*\*] for an Available Tenor of one-month’s duration, or such other percentage (and equivalent basis points) that the Financial Services Agent may specify that is acceptable to the Seller, acting reasonably, or
  - (ii) the sum of: (x) Daily Compounded CORRA and (y) [\*\*] for an Available Tenor of one-month’s duration, or such other percentage (and equivalent basis points) that the Financial Services Agent may specify that is acceptable to the Seller, acting reasonably; and

- (b) for purposes of Section 1.10 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 Financial Services Agent and the Seller as the replacement for such Available Tenor of such Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by the Relevant Governmental Body, for Canadian 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 [\*\*], the Benchmark Replacement will be deemed to be [\*\*] for the purposes of this Agreement and the Related Documents;

**“Benchmark Replacement Conforming Changes”** means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Prime Rate,” the definition of “Business Day,” the definition of “Collection Period,” the timing and frequency of determining rates and making payments of interest, the 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 Financial Services Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Financial Services Agent in a manner substantially consistent with market practice (or, if the Financial Services Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Financial Services Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Financial Services Agent decides is reasonably necessary in connection with the administration of this Agreement and the Loan Agreement);

**“Benchmark Transition Event”** means, with respect to any then-current Benchmark other than CDOR, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Benchmark, the regulatory supervisor for the administrator of such Benchmark, the Bank of Canada, an insolvency official with jurisdiction over the administrator for such Benchmark, a resolution authority with jurisdiction over the administrator for such Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark, announcing or stating that (a) such administrator has ceased or will cease on a specified date to provide all Available Tenors of such Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark or (b) all Available Tenors of such Benchmark are or will no longer be representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored;

**“Blocked Account Agreement”** means the blocked account agreements referred to in Section 3.1(l);

**“Blocked Account Claims”** means any Security Interest in favour of a bank or other financial institution under a Blocked Account Agreement;

“**Business Day**” means any day (other than a Saturday, Sunday or public holiday) on which banks are open for business in Toronto, Ontario, but excluding any public holiday in the United States identified by the Seller as not constituting a “Business Day” for the purposes of this Agreement;

“**Buyer’s Fees**” means the fees paid by an Obligor to an auction or other commercial inventory source in connection with a purchase of a vehicle by such Obligor;

“**Carry Costs**” means, with respect to any Collection Period, the sum of the amounts of the following items that accrued or were incurred during such Collection Period: (a) the Lender Finance Charges, (b) the Standby Fee, (c) the Replacement Servicer Fee, or, to the extent no Replacement Servicer Fee is payable during such Collection Period, the Notional Servicer Fee, (d) the Backup Servicing Fees and (e) all other expenses and fees payable by the Seller under this Agreement;

“**Cash Deposit Amount**” means, with respect to the Purchase or any Increase, an amount sufficient to ensure that after effecting such Purchase or Increase, the amount contained in the Cash Reserve Account is equal to the Cash Reserve Required Amount;

“**Cash Payment**” means, in respect of the Purchase the amount set forth in the Purchase Request as the “Cash Payment” and, in respect of each Increase, the amount set forth in the related Increase Request as the “Cash Payment”;

“**Cash Reserve Account**” means an Eligible Deposit Account established in the name of the Trust and designated as the Cash Reserve Account for the purposes hereof, the balance of which shall be subject to the control of the Trust for the benefit of the Trust and the Seller and applied in accordance with the terms hereof, which account shall bear interest and shall initially be account number [\*\*], transit number [\*\*], maintained at [\*\*];

“**Cash Reserve Event**” means as of any Settlement Date, (i) the arithmetic average of the Net Spread for [\*\*], (ii) the Delinquency Ratio is greater than [\*\*], or (iii) the arithmetic average of the Payment Rate for [\*\*]; provided, however, that following each occurrence of a Cash Reserve Event, such trigger shall remain in effect until [\*\*];

“**Cash Reserve Excess Amount**” means, on any Remittance Date, the amount of cash on deposit in the Cash Reserve Account after giving effect to any payments into and from the Cash Reserve Account on such Remittance Date in excess of the Cash Reserve Required Amount;

“**Cash Reserve Required Amount**” means, on any day the sum of (a) after the occurrence and during the continuation of a Cash Reserve Event, [\*\*] of the Investment on such day, and (b) on any other day, 1.0% of the Investment on such day;

“**CDOR**” means the Canadian Dollar rate for bankers’ acceptance borrowings known as the Canadian Dollar Offered Rate provided by RBSL, as the administrator of the benchmark (or a successor administrator);

“**CDOR Cessation Date**” has the meaning ascribed thereto in Section 1.10(a);

“**Closing Date**” means March 1, 2023, or such other date as may be mutually agreed between the parties;

“**Collection Account**” means an Eligible Deposit Account established in the name of the Trust, in trust for and on behalf of the Trust, the Seller and the Financial Services Agent, which account shall initially be account number [\*\*], transit number [\*\*] maintained at [\*\*];

“**Collection Costs**” means, in respect of a Collection Period, all reasonable out-of-pocket costs and expenses of the Servicer (if other than the Seller, the Backup Servicer or any Affiliate thereof) and the Trust in administering the Pool Assets and collecting amounts payable thereunder and enforcing the Related Security related thereto, including reasonable legal expenses of the Servicer or the Trust;

“**Collection Period**” means the period from and including the first day of a calendar month to and including the last day of such calendar month, provided that the last Collection Period will be the Collection Period in which the Final Termination Date occurs;

“**Collections**” means, with respect to the Pool Receivables, (a) all funds which are received by the Seller, the Servicer or the Trust in payment of any amounts owed in respect of such Receivables (including, without limitation, principal payments, finance charges, floorplan fees, curtailment fees, interest and all other charges), or applied (or to be applied) to amounts owed in respect of such Receivables (including, without limitation, insurance payments and net proceeds of the sale or other disposition of vehicles or other collateral or property of the related Obligor or any other Person directly or indirectly liable for the payment of Pool Receivables applied (or to be applied) thereto), (b) all Collections deemed to have been received pursuant to Section 5.17, (c) all other proceeds of such Receivables, and (d) without duplication, all other amounts deposited to the Deposit Accounts or the Collection Account hereunder;

“**Conduit Lender**” means each Lender that issues asset-backed commercial paper;

“**Contract**” means, with respect to any Obligor, collectively, the Dealer Note issued by such Obligor, or similar agreement between such Obligor and the Seller, any guarantee issued in connection therewith and each other agreement or instrument executed by an Obligor pursuant to or in connection with any of the foregoing, the purpose of which is to evidence, secure or support such Obligor’s obligations to the Seller under such Dealer Note or other similar agreement, forms of all such Dealer Notes and other agreement forms having been delivered to and approved by the Trust;

“**CORRA**” means the Canadian Overnight Repo Rate Average administered and published by the Bank of Canada (or any successor administrator);

“**CP Rate**” means, for a Conduit Lender, at the election of such Conduit Lender, for any day during a Collection Period, (a) the weighted average annual rate of interest at which asset-backed commercial paper is issued by such Conduit Lender specifically to finance such Conduit Lender’s Percentage Interest of the Loan Amount, or (b) the weighted average annual rate of interest applicable to all asset-backed commercial paper of such Conduit Lender (other than subordinated asset-backed commercial paper) issued to fund Canadian Dollar investments of such Conduit Lender outstanding during such Collection Period other than any asset-backed commercial paper

issued by such Conduit Lender to specifically fund other pools of assets acquired by such Conduit Lender where the cost of funding in respect of such other pools of assets is determined by reference to such specifically issued asset-backed commercial paper; provided that, in each case, (i) any such asset-backed commercial paper may be issued in either Canadian Dollars or United States dollars with the appropriate market rate currency swap agreements being entered into to match such issuance to the funding requirements of the Conduit Lender, and (ii) the weighted average annual rate of interest at which asset-backed commercial paper is issued in respect of any day during a Collection Period shall reflect any costs incurred by the Conduit Lender in connection with any such market rate currency swap agreements (provided that no amount shall be included in the calculation of the CP Rate which reflects any termination amounts payable by the Conduit Lender in respect of the early termination of any such market rate currency swap agreement) and any amounts payable to holders of asset-backed commercial paper notes in connection with any redemption or repurchase of asset-backed commercial paper;

“**Credit and Collection Policies**” means those receivables credit and collection policies and procedures of the Servicer in effect on the date of this Agreement and provided to the Trust (including the core policies and procedures manuals and the credit policy manual), as modified in compliance with this Agreement;

“**Curtailed Date**” means, with respect to any Receivable, the date specified as such in the Contract for such Receivable;

“**Daily Compounded CORRA**” means, for any day in a Collection Period, CORRA with interest accruing on a compounded daily basis, with the methodology and conventions for this rate (which will include compounding in arrears with a lookback) being established by the Financial Services Agent in accordance with the methodology and conventions for this rate selected or recommended by the Relevant Governmental Body for determining compounded CORRA for business loans; provided that if the Financial Services Agent decides that any such convention is not administratively feasible for the Financial Services Agent, then the Financial Services Agent may establish another convention in its reasonable discretion; and provided that if the administrator has not provided or published CORRA and a Benchmark Transition Event with respect to CORRA has not occurred, then, in respect of any day for which CORRA is required, references to CORRA will be deemed to be references to the last provided or published CORRA;

“**DBRS**” means DBRS Limited, and its successors;

“**Dealer Note**” means a note and security agreement substantially in the form of the Seller’s standard form demand promissory note and security agreement and any other promissory note issued, or agreement made by, an Obligor in favor of the Seller;

“**Declaration of Trust**” means the declaration of trust, dated as of November 28, 2022, by Computershare Trust Company of Canada in respect of the establishment of AFCI Funding Trust, as amended restated by an amended and restated declaration of trust, dated as of the date hereof, as the same may be further amended, restated, supplemented or modified from time to time;

“**Default Ratio**” means the ratio (expressed as a percentage and rounded upward to the nearest 1/100th of 1%) computed as of each Settlement Date by dividing (i) the aggregate Principal

Balance of all Receivables (other than Specified Ineligible Receivables) that became Defaulted Receivables during the related Collection Period plus the aggregate amount of non-cash adjustments that reduced the Principal Balance of any Receivable during such Collection Period (other than a Receivable that became a Defaulted Receivable during such Collection Period) by (ii) the aggregate amount of Receivables (other than Specified Ineligible Receivables) that were generated by the Seller during the Collection Period that occurred five calendar months prior to the Collection Period ending on such Settlement Date;

“**Defaulted Receivable**” means a Pool Receivable:

- (a) as to which any payment, or part thereof, remains unpaid for more than 90 days after the due date for such payment;
- (b) which, consistent with the Credit and Collection Policies, would be written off the Seller’s books as uncollectible; or
- (c) which is converted to a long term payment plan in the form of a note or other similar document;

“**Deferred Increase Date**” has the meaning ascribed thereto in Section 2.1(c);

“**Deferred Purchase Price**” means the aggregate of amounts paid to the Seller in respect of the Deferred Purchase Price pursuant to Sections 2.7(f), 2.10(g) and 2.13;

“**Delinquency Ratio**” means the ratio (expressed as a percentage and rounded upward to the nearest 1/100 of 1%) computed as of each Settlement Date by dividing (i) the aggregate Principal Balance of all Receivables (other than Specified Ineligible Receivables) that were Delinquent Receivables on such Settlement Date, by (ii) the Pool Balance (less the aggregate Principal Balance of all Specified Ineligible Receivables) on such Settlement Date;

“**Delinquent Receivable**” means a Pool Receivable which is not a Defaulted Receivable (i) as to which any payment, or part thereof, remains unpaid for more than 30 days after the due date for such payment, or (ii) which, consistent with the Credit and Collection Policies, would be classified as delinquent by the Seller;

“**Deposit Accounts**” means the Eligible Deposit Accounts established in the name of the Servicer, in trust for and on behalf of the Trust and the Seller, which accounts shall be separate and segregated from the Servicer’s own assets and shall initially be the accounts listed in Schedule “E”, as such Schedule may be updated from time to time by the Servicer with the approval of the Trust;

“**Eligible Deposit Account**” means either (a) a deposit account with an Eligible Institution, or (b) a segregated trust account with the corporate trust department of (i) an Eligible Institution, or (ii) a trust company acceptable to the Financial Services Agent and the Agents;

“**Eligible Institution**” means a depository institution that (a) has a long-term unsecured debt rating from DBRS of at least “A” or a short-term unsecured debt rating from DBRS of at least “R-1 (low)” or is otherwise acceptable to the Financial Services Agent; and (b) has a long-term

unsecured debt rating from Moody's of at least "Aa3" or a short-term unsecured debt rating from Moody's of "Prime-1" or is otherwise acceptable to the Financial Services Agent;

**"Eligible Investments"** means, at any particular date, book-based securities, negotiable instruments or securities, in each case maturing not later than the Business Day preceding the next succeeding Remittance Date after such date represented by instruments in bearer or registered form which evidence any of:

- (a) obligations issued or fully guaranteed as to both credit and timeliness by the Government of Canada;
- (b) short-term or long-term unsecured debt obligations issued or fully guaranteed by any province, territory or municipality of Canada, provided that such securities are rated at least "R-1 (low)" (short term) or "A" (long term) by DBRS, and "Prime-1" (short term) or "Aa3" (long term) by Moody's;
- (c) deposits, bankers' acceptances and subordinated debentures issued or accepted by any Canadian Schedule I bank, provided that such securities are rated at least "R-1 (low)" (short term) or "A" (long term) by DBRS, and "Prime-1" (short term) or "Aa3" (long term) by Moody's;
- (d) deposits, bankers' acceptances and subordinated debentures issued or accepted by any Canadian Schedule II bank or Schedule III bank, provided that such securities are rated at least "R-1 (low)" (short term) or "A" (long term) by DBRS, and "Prime-1" (short term) or "Aa3" (long term) by Moody's;
- (e) commercial paper, secured bonds and senior unsecured obligations of any Person, provided that such securities are issued in the Canadian market and are rated at least "R-1 (low)" (short term) or "A" (long term) by DBRS, and "Prime-1" (short term) or "Aa3" (long term) by Moody's;
- (f) asset-backed commercial paper of any Canadian trust, provided that such securities benefit from the support of a global-style liquidity facility from a Canadian Schedule I, Schedule II or Schedule III bank and are rated at least "R-1 (high) (sf)" by DBRS, and "Prime-1 (sf)" by Moody's; and
- (g) saving or other time deposits accepted by an Eligible Institution;

**"Eligible Receivable"** means, at any time, a Receivable:

- (a) the Obligor of which (i) is a Person that is a resident of Canada and located in a province or territory of Canada or is a co-signer or co-guarantor who is a resident of another country (provided there is at least one personal guaranty from a Canadian resident), (ii) is not the Government of Canada or any agency or instrumentality thereof or any federal crown corporation, and (iii) is not any provincial or territorial government or agency thereof;
  - (b) that is not a Defaulted Receivable or Delinquent Receivable;
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- (c) which is denominated and payable to the Seller only in Canadian dollars in Canada;
  - (d) which, together with the related Contract and Related Security, has been originated or acquired in Canada by the Seller in the ordinary course of business;
  - (e) which arises under a Contract which, together with such Receivable and the Related Security in respect thereof, is in full force and effect and constitutes the legal, valid and binding obligation of the Obligor thereof, enforceable by the Seller and its assigns against such Obligor in accordance with its terms subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and to equitable principles of general application;
  - (f) which is secured by the Related Security which contains customary and enforceable provisions such that the rights and remedies of the Seller and its assigns are adequate for realization against the collateral of the benefits of the security, including the Related Security of such Receivable, subject to the limitations on enforceability in (e) above;
  - (g) in respect of which the Related Vehicle and Proceeds Security, as against creditors of the applicable Obligor, is a perfected, valid, subsisting and enforceable Security Interest in the Financed Vehicle in favour of the Seller, perfected by all necessary or appropriate filings, registrations, recordings or other actions in each jurisdiction necessary to ensure the perfection of such Security Interest for the term thereof and which, in respect of the Related Vehicle Security, is subject only to Security Interests in favour of other Persons which are subordinate in priority to the Related Vehicle Security, Operation of Law Claims and Government and Employee Claims, and provided that, to the knowledge of the Seller at such time, no enforcement or collection proceedings have been commenced in respect of any such Security Interest, Operation of Law Claim or Government and Employee Claim;
  - (h) for which the interest of the Seller in the Receivable and the Related Security related thereto and the Contract giving rise thereto, as against creditors of the Seller, is free and clear of all Security Interests and rights of others, other than Government and Employee Claims, Operation of Law Claims, Blocked Account Claims and those created pursuant to this Agreement;
  - (i) upon the purchase of an interest in such Receivable and the Related Security in respect thereof by the Trust, the Trust will obtain good and marketable title to the Trust's Co-Ownership Interest therein free and clear of any Security Interest created by, or arising through, the Seller (as opposed to a Security Interest created by, or arising through an Obligor) other than Blocked Account Claims;
  - (j) the sale of which pursuant to the terms hereof does not contravene or conflict with any law, rules or regulations applicable thereto, or require the consent of the Obligor or any other Person;
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- (k) in respect of which, to the knowledge of the Seller, no enforcement action, whether by repossession or otherwise, has been taken by any Person in respect of the related Financed Vehicle;
  - (l) there is no federal, provincial or local law or ordinance under which such Receivable or the Related Security is subject to any Taxes, nor will any payment or remittance to be made by or on behalf of the Seller on its own behalf or on behalf of any Obligor under this Agreement be subject to any Taxes; provided, however, that this statement shall not extend to any Taxes payable by, or required to be withheld by the Seller on account of Taxes payable on the income or capital of the Trust or Taxes payable in respect of GST or PST payable by Obligors;
  - (m) (i) which satisfies all applicable requirements of the Credit and Collection Policies, (ii) other than with respect to any Rental Receivable or any Principal Pass Receivable, whose terms require a minimum principal payment of not less than [\*\*] plus accrued interest and fees on each Curtailment Date, provided that, subject to a Special Concentration Percentage, such minimum principal payment for a Receivable may be less than [\*\*] so long as it is at least [\*\*], (iii) other than with respect to any Principal Pass Receivable, for which all payments required to be made pursuant to the related Contract in connection with any Curtailment Date extension have not been waived and have been made within [\*\*] of each such extension, (iv) whose terms (including the due date thereof) have not otherwise been amended or modified in any material respect, and (v) [\*\*];
  - (n) which is payable on demand and which the related Contract requires repayment on the earlier of (i) [\*\*] following the sale of the related Financed Vehicle, and (ii) the Curtailment Date for such Receivable;
  - (o) which arises from the making of a loan to finance the purchase of (i) an automobile or light duty truck, driven or drawn by mechanical power, manufactured primarily for use on the public streets, roads or highways, with two axles or (ii) a Specialty Vehicle;
  - (p) where not more than [\*\*] of the aggregate Principal Balance of all Receivables of the Obligor of such Receivable and its Affiliates are Defaulted Receivables;
  - (q) the Obligor of which is not an Affiliate of the Seller or the Performance Guarantor, an Excluded Obligor or a father, mother, son or daughter (or any Affiliate thereof) of any officer or director of the Seller or its Affiliates;
  - (r) the Obligor (exclusive of minority owner guarantors and operating non-owner guarantors) of which is not, to the knowledge of the Seller, subject to any proceedings of the type described in Sections 5.11(g) or 5.11(h);
  - (s) which is guaranteed by the related Obligor's parent, general partner or owners, provided that, in the Servicer's discretion, guarantees shall not be required from (i) public companies, (ii) private equity firms or other similar entities, or (iii) passive partners or minority partners when an operating partner has provided a guarantee;
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- (t) which is not a Specified Ineligible Receivable or an Excluded Receivable;
- (u) with respect to which the Trust has not given Seller at least five (5) Business Days' notice that such Receivable will not be an Eligible Receivable hereunder, provided that such designation is in good faith and based on a reasonable business judgement by the Trust that such Receivable should not be considered an Eligible Receivable;
- (v) for which the Obligor has not "short-paid" the Receivables or paid with non-sufficient funds;
- (w) if the Receivable is an Auction Credit, then (i) the wholesale auction is not fronting for a government or a governmental subdivision or agency, (ii) the Servicer has received a bill of sale evidencing the transaction between the wholesale auction and purchasing dealer, (iii) the wholesale auction has been underwritten in accordance with the Credit and Collection Policies' requirements for platinum dealers, (iv) a PPSA financing statement or equivalent has been filed against the wholesale auction, and (v) clauses (e) and (s) above shall be deemed to be satisfied if the wholesale auction, rather than the applicable dealer, signs the applicable Contract; and
- (x) (i) except for any Contract which has been executed electronically, there is only one original, executed copy of such Contract held by the Seller and (ii) for any Contract which has been executed electronically, such Contract has been executed in compliance with all applicable e-sign laws and the Seller has access to an electronic copy of such Contract executed by all parties thereto which can be printed and used to enforce such Contract;

**"Enhancement Build Trigger"** means the occurrence of either (i) as of the last day of any calendar month, the Adjusted Net Spread for such calendar month is less than [\*\*], or (ii) as of the last day of any calendar month, the Payment Rate for such calendar month shall be less than [\*\*]; provided, that following each occurrence of an Enhancement Build Trigger, such trigger shall remain in effect until, for three consecutive calendar months, (i) the Adjusted Net Spread is greater than [\*\*] and (ii) the Payment Rate is greater than [\*\*] (in each case, as determined at the end of each such calendar month);

**"ETA"** means Part IX of the *Excise Tax Act* (Canada);

**"Excluded Obligor"** means an Obligor so designated in writing as such by the Financial Services Agent in a notice to the Seller in good faith and in the Financial Services Agent's reasonable judgment relating to credit considerations from time to time, it being understood that from time to time such notice may be revoked by written notice to the Seller;

**"Excluded Receivable"** means any Receivable that is clearly not contemplated by this Agreement due to size, terms, ineligibility or commingling concerns. The Trust has no ownership or other interest in any Excluded Receivables. For the avoidance of doubt, as required by Sections 5.7(o) and 7.2(j), the Seller and the Servicer shall maintain a complete list of Excluded Receivables at all times and shall provide notice to the Trust and the Financial Services Agent promptly following any changes thereto;

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“**Fee Letter**” means the letter agreement between the Seller, the Agents and the Financial Services Agent, dated March 1, 2023 as the same may be amended, varied or replaced from time to time;

“**Final Termination Date**” means the first Remittance Date following the Termination Date on which the Investment is reduced to zero and all Replacement Servicer Fees, Collection Costs, Lender Finance Charges, Backup Servicing Fees, Transition Expenses, indemnified amounts and Standby Fees have been paid in full;

“**Finance Charge and Floorplan Fee Collections**” means, with respect to any Collection Period, any Collections applied by the Servicer in such Collection Period in respect of interest and finance charges and any other amount (other than principal) owed under a Contract;

“**Financed Vehicle**” means [\*\*];

“**GAAP**” means generally accepted accounting principles and practices in the United States, consistently applied;

“**Government and Employee Claim**” means, in respect of any Person, liens or deemed trusts for taxes, assessments, employee claims or similar governmental or employee charges or levies affecting such Person or its property and, in the case of the Seller, incurred in the ordinary course of business that are not yet due and payable or as to which any applicable grace period shall not have expired, or that are being contested in good faith by proper proceedings and for which adequate reserves have been established, but only so long as foreclosure with respect to such a lien is not imminent and the use and value of the property to which the Security Interest attaches is not impaired during the pendency of such proceeding;

“**Governmental Authority**” means the government of any sovereign state or any political subdivision thereof, or of any political subdivision of a political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory, administrative or other functions of or pertaining to government;

“**Gross-up**” has the meaning ascribed thereto in Section 9.5;

“**Grossed-up Payment**” has the meaning ascribed thereto in Section 9.5;

“**GST**” means all amounts payable under the ETA or pursuant to any similar value added tax legislation in any other jurisdiction of Canada that is stated to be harmonized with the GST, and any similar tax payable under the laws of the Province of Quebec;

“**Heavy Duty Truck**” means [\*\*];

“**Increase**” means an increase in the Investment pursuant to Section 2.1(b) hereof;

“**Increase Request**” means the written request sent to the Trust by the Seller pursuant to Section 2.1(b) in the form annexed hereto as Schedule “F”;

“**Indebtedness**” means, without duplication:

- (a) indebtedness for borrowed money (including, without limitation, amounts payable to Affiliates);
- (b) obligations evidenced by bonds, debentures, notes or other similar instruments;
- (c) the redemption price of any redeemable preference shares;
- (d) obligations in respect of letters of credit or similar instruments issued or accepted by any bank or other institution; and
- (e) obligations under direct or indirect guarantees in respect of, and obligations (contingent or otherwise) to purchase or otherwise acquire, or otherwise to assure a creditor against loss in respect of, indebtedness or obligations of others of the kinds referred to in clauses (a) through (d) above;

provided, however, that “Indebtedness” shall not include obligations both (A) classified as accounts payable or accrued liabilities under GAAP and (B) incurred in the ordinary course of business;

“**Indemnified Amounts**” has the meaning ascribed thereto in Section 9.1;

“**Indemnified Parties**” has the meaning ascribed thereto in Section 9.1;

“**Initial Closing Date**” means March 1, 2023;

“**Insurance Policies**” means any comprehensive, collision, fire, theft or other insurance policy maintained by an Obligor with respect to one or more Financed Vehicles which is in an amount not less than 50% of the market value of such Financed Vehicles and in which the Seller or the Servicer is or is required to be named as loss payee;

“**Interest Rate**” means, for a Lender and each day of a Collection Period (the “**relevant day**”):

- (a) if such Lender is a Conduit Lender,
  - (i) for the Percentage Interest of the Loan Amount of such Lender that is funded on the relevant day through the issuance of asset-backed commercial paper, a rate per annum, calculated on the basis of a 365-day year, equal to the sum of (x) the CP Rate for the Notes of such Lender for the relevant day, and (y) the Program Fee Rate; and
  - (ii) for the Percentage Interest of the Loan Amount of such Lender that is funded on the relevant day other than through the issuance of asset-backed commercial paper, a rate per annum, calculated on the basis of a 365-day year, equal to the sum of (x) the Benchmark for such day, and (y) the Program Fee Rate; and

- (b) if such Lender is not a Conduit Lender, a rate per annum, calculated on the basis of a 365-day year, equal to the sum of (x) the Benchmark for such day, and (y) the Program Fee Rate,

provided that, at any time on or after the occurrence of a Trigger Event, the Interest Rate for any Lender for any relevant day will be the greater of (i) the Prime Rate for such Lender Group for the relevant day plus [\*\*] and (ii) the Benchmark for such day plus [\*\*];

“**Investment**” means, with respect to the Trust, the aggregate of the amounts paid to the Seller in respect of Cash Payments pursuant to this Agreement, reduced from time to time by amounts actually distributed and applied on account of such Investment pursuant to Article 2; provided, that if such Investment shall have been reduced by any distribution and thereafter all or a portion of such distribution is rescinded or must otherwise be returned for any reason, such Investment shall be increased by the amount of such rescinded or returned distribution, as though it had not been made;

“**Issuer Trustee**” means Computershare Trust Company of Canada, in its capacity as trustee of AFCI Funding Trust;

“**Issuer Trustee Fees**” means fees payable to the Issuer Trustee in connection with services performed by it under the Declaration of Trust;

“**KAR Credit Facility**” means that certain Amended and Restated Credit Agreement, originally dated as of March 11, 2014, as amended by the Incremental Commitment Agreement and First Amendment dated as of March 9, 2016, as amended by the Incremental Commitment Agreement and Second Amendment dated as of May 31, 2017, as amended by the Third Amendment dated as of September 19, 2019, as amended by the Fourth Amendment dated as of May 29, 2020 and amended by the Fifth Amendment dated as of September 2, 2020, by and among KAR, as borrower, JPMorgan Chase Bank, N.A., as administrative agent, and the other lenders and agents party thereto, as the same may be amended, supplemented, restated or otherwise modified from time to time;

“**KAR Financial Covenant**” means the financial covenant regarding KAR’s maximum consolidated senior secured leverage ratio as set forth in Section 8.1 of the KAR Credit Facility. Such covenant (including all defined terms incorporated therein) will survive the termination of the KAR Credit Facility and can only be amended, modified, added or terminated from time to time with the prior written consent of the Financial Services Agent; provided, however, that as long as KAR’s senior secured debt shall be rated at least “BBB- (stable)” by Standard & Poor’s and at least “Baa3 (stable)” by Moody’s, the financial covenant will conform with the financial covenants required by KAR’s Credit Facility or any replacement facility without the consent of the Trust;

“**KAR Financial Covenant Event**” means any breach of the KAR Financial Covenant;

“**KAR Financial Covenant Termination Event**” means, following the occurrence of a KAR Financial Covenant Event, the earliest to occur of (i) if a Trust Notice Event has occurred, 120 days following the occurrence of such Trust Notice Event, (ii) any KAR Restricted Amendment,

and (iii) the occurrence of a Trust Notice Event resulting in the KAR Credit Facility being accelerated;

“**KAR Restricted Amendment**” means any action under or amendment to the KAR Credit Facility which, in the sole and absolute discretion of the Financial Services Agent, results in or may result in (i) an acceleration (in whole or in part) of principal or interest or the amount of principal or interest due under the KAR Credit Facility, (ii) the pledge of any additional collateral by the Seller under the KAR Credit Facility other than newly acquired collateral of the same type already pledged thereunder (e.g., a newly-acquired additional trademark is pledged where all trademarks of the relevant entity had previously been pledged), or (iii) any amendment to any provisions or the addition of any provision to the KAR Credit Facility regarding the Seller or its assets;

“**Legal Final Maturity Date**” means the first Settlement Date on or after the date that is two years after the Termination Date;

“**Lender Finance Charges**” means, with respect to a Lender and any Collection Period, the sum of (a) the sum of the amounts calculated for each day during the related Collection Period equal to the product of (i) the Lender’s Percentage Interest of the Loan Amount on such day, (ii) the Interest Rate for such Lender on such day, and (iii) a fraction, (x) the numerator of which is 1 and (y) the denominator of which is 365, plus (b) any unpaid Lender Finance Charges in respect of prior Collection Periods;

“**Loan Agreement**” means the loan and security agreement, dated as of the date hereof, between the Trust, the Servicer, the Agents, the Lenders and the Financial Services Agent, as the same may be amended, restated, supplemented or otherwise modified from time to time;

“**Loss Percentage**” means, on any Settlement Date, the greatest of [\*\*];

“**Loss Reserve**” means, for any date, an amount equal to the product of [\*\*];

“**Lot Check**” means, with respect to an Obligor, a physical inspection of such Obligor’s Financed Vehicles and which may include a review of such Obligor’s books and records related thereto;

“**Marine Craft**” means [\*\*];

“**Material Adverse Effect**” means any effect upon the business, operations, property or financial condition of the Seller or the Servicer, as applicable, which materially adversely affects (i) the interest of the Trust in the Pool Assets, (ii) the collectability or credit quality of a Receivable forming part of the Pool Assets, (iii) the legality, validity or enforceability of Receivables, (iv) the Related Security or (v) the Seller or Servicer’s, as applicable, ability to perform its obligations hereunder;

“**Moody’s**” means Moody’s Investor Services, Inc. and its successors;

“**Motorcycle**” means [\*\*];

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“**Net Cash Payment**” means, with respect to the Purchase the amount set forth in the Purchase Request as the “Net Cash Payment” and, in respect of each Increase, the amount set forth in the related Increase Request as the “Net Cash Payment”;

“**Net Receivables Pool Balance**” means, at any time, the amount determined pursuant to the calculation in Schedule “H”;

“**Net Spread**” means, in respect of a Collection Period, the annualized percentage equivalent of a fraction, the numerator of which is the excess of (x) all Finance Charge and Floorplan Fee Collections received and applied during such Collection Period over (y) the Carry Costs for such Collection Period; and the denominator of which is the average Pool Balance during such Collection Period;

“**New Car**” means a “new motor vehicle” within the meaning of Regulation 333/08 under the *Motor Vehicle Dealer Act, 2002* (Ontario);

“**Normal Concentration Percentage**” for any Obligor (other than Obligors subject to Special Concentration Percentages) means at any time, [\*\*];

“**Notes**” means the asset-backed notes issued by a Conduit Lender from time to time in connection with its funding of its *Percentage* Interest of the Loan Amount;

“**Notional Servicer Fee**” means, for any Collection Period, an amount equal to [\*\*] times the average *aggregate* net book value of all Pool Receivables outstanding during such Collection Period;

“**Obligor**” means any Person who is obligated to make payment on a Receivable including any co-signer or guarantor;

“**Operation of Law Claim**” means any mechanic’s lien, supplier’s lien, materialman’s lien, landlord’s lien or similar lien arising and having priority governed by operation of law but *not* including any Security Interest arising pursuant to a written security agreement and which can only be perfected pursuant to the provisions of a PPSA;

“**Paydown Date**” means any day prior to the occurrence of a Trigger Date on which:

- (a) the Servicer has failed to deliver a Servicer Report or a Portfolio Certificate in accordance with the terms hereof;
- (b) any of the statements contained in Section 3.2(b) are not satisfied and have not been waived by the Trust and the Financial Services Agent; or
- (c) the Trust’s Share is greater than 100%;

“**Payment Rate**” means the ratio (expressed as a percentage and rounded upward to the nearest 1/100th of 1%) computed as of the last day of each Collection Period by dividing [\*\*];



“**Percentage Interest**” means, as to any Lender at any time of determination, the percentage equivalent of a fraction, the numerator of which is an amount equal to the portion of the Loan Amount owing to such Lender at such time and the denominator of which is an amount equal to the Loan Amount at such time, in each case, after giving effect to all increases and decreases in the Loan Amount on or prior to such time;

“**Person**” means an individual, partnership, corporation, limited liability company, trust, joint venture, unincorporated organization, association, board or body established by statute, government (or any agency or political subdivision thereof) or other entity;

“**Pool Assets**” means each Pool Receivable and the Related Security with respect thereto;

“**Pool Balance**” means, on a particular date, the aggregate Principal Balance of the Receivables Pool on that date;

“**Pool Receivable**” means any Receivable forming part of the Receivables Pool;

“**Portfolio Certificate**” means a certificate substantially in the form of Schedule “D” thereto;

“**PPSA**” means the Personal Property Security Act (Ontario) and the comparable legislation of any other province or territory of Canada;

“**Prime Rate**” means, for any Lender Group at any time and from time to time, the fluctuating annual interest rate most recently established by the Agent for such Lender Group or an Affiliate of such Agent, which it refers to as its “prime rate”;

“**Principal Balance**” means, with respect to any Receivable, the then unpaid principal amount of all advances or loans made to the related Obligor pursuant to the related Contract by the Seller, to the extent that [\*\*];

“**Principal Pass Receivable**” means a Receivable which satisfies all of the requirements of the definition of Eligible Receivable except clause [\*\*] thereof, provided such Receivable either (i) complies with AFCI’s “principal pass” program, as outlined in the Credit and Collection Policies, or (ii) pursuant to the Credit and Collection Policies, was granted an exception, not exceeding [\*\*], provided all such exceptions in this clause (ii) (in the aggregate) shall not exceed [\*\*]. For the avoidance of doubt, Receivables falling under clauses (i) and (ii) in the aggregate cannot exceed [\*\*];

“**Program Fee Rate**” has the meaning ascribed thereto in the Fee Letter;

“**PST**” means amounts payable under a statute of any province or territory in Canada imposing a single stage retail sales tax;

“**Purchase**” means the purchase of the Trust’s Co-Ownership Interest effected pursuant to Section 2.2(a);

“**Purchase Price**” means the sum of the Cash Payments and the Deferred Purchase Price;

“**Purchase Request**” means the written request sent to the Trust, the Agents and the Financial Services Agent by the Seller pursuant to Section 2.1 in form annexed hereto as Schedule “A”;

“**Quebec Assignment**” means the form of assignment attached hereto as Schedule “G”;

“**RBSL**” has the meaning ascribed thereto in Section 1.10;

“**Receivable**” means any right to payment from an Obligor arising under a Contract, whether such indebtedness or other obligations constitute accounts, chattel paper, instruments or general intangibles, arising from the providing of financing and other services by the Seller to (i) new, used and wholesale automobile, light truck or other Specialty Vehicle dealers or (ii) wholesale auctions under an Auction Credit, and includes the right to payment of any interest or finance charges and other obligations of such Obligor with respect thereto;

“**Receivables Pool**” means all present Receivables (other than Excluded Receivables) and all future Receivables (other than Excluded Receivables) and all Related Security with respect to such Receivables; provided that the Receivables Pool shall not include any such interests (other than proceeds of such interests) created after the Final Termination Date;

“**Records**” means all contracts, books, records, microfiche and other documents and information (including computer programmes, tapes, diskettes, data processing software and related property and rights) maintained by or on behalf of the Seller evidencing or otherwise relating to any Pool Receivables, including the Contracts related thereto, or relating to any of the related Financed Vehicles, Obligors, Related Security, Collections or the Deposit Accounts and shall include all such records, information and material maintained or required to be maintained by the Servicer in respect thereof but excluding for greater certainty the financial statements of the Seller and its Affiliates;

“**Recreational Vehicle**” means [\*\*];

“**Register**” has the meaning ascribed thereto in Section 10.13;

“**Related Document**” means each Purchase Request, the Loan Agreement, the Backup Servicing Agreement, the Declaration of Trust, the Administration Agreement and all other agreements or exhibits, related to or delivered pursuant to this Agreement, as the same may be amended, restated, modified or supplemented from time to time.

“**Related Security**” means, with respect to any Receivable:

- (a) the Related Vehicle and Proceeds Security;
  - (b) all of the Seller’s interest in all warranties, indemnities, service obligations and other contract rights issued or granted by, or otherwise existing under applicable law against, the Obligor or the manufacturer in respect of the related Financed Vehicle;
  - (c) all guarantees and Security Interests (other than the Related Vehicle and Proceeds Security) from time to time, if any, purporting to secure payment of such
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Receivable, whether pursuant to the Contract related to such Receivable, or otherwise, together with all financing statements or other instruments describing any collateral securing such Receivable, and including all Security Interests (other than the Related Vehicle and Proceeds Security) granted by any Person (whether or not the primary Obligor on such Receivable) under or in connection therewith and purporting to secure payment of such Receivable;

- (d) all Records relating to such Receivable, including all original Contracts;
- (e) all service contracts and other contracts and agreements relating to such Receivable; and
- (f) all proceeds of or relating to any of the foregoing, including proceeds of or relating to the Receivable;

**“Related Vehicle and Proceeds Security”** means with respect to any Receivable, the Seller’s Security Interest in the related Financed Vehicle, and all proceeds thereof including proceeds of Insurance Policies;

**“Related Vehicle Security”** means with respect to any Receivable, the Seller’s Security Interest in the related Financed Vehicle excluding all proceeds thereof but including proceeds of Insurance Policies;

**“Relevant Governmental Body”** means the Bank of Canada, or a committee officially endorsed or convened by the Bank of Canada, or any successor thereto;

**“Remittance Date”** means (i) Tuesday of each week or, if Tuesday is not a Business Day, the next Business Day, (ii) the first Business Day of each Collection Period, and/or (iii) any other Business Day agreed to by the Servicer, the Agents and the Financial Services Agent; provided that, after the Termination Date, the Financial Services Agent may designate additional Business Days as Remittance Dates in its discretion;

**“Rental Receivable”** means a Receivable which satisfies all the requirements of the definition of Eligible Receivable except [\*\*], provided [\*\*] (ii) such Receivable must have a current maturity of [\*\*], (iii) the terms of the related Contract as they apply to such Receivable require [\*\*], (iv) the Obligor thereof must be otherwise current on its obligations under the related Contract, and (v) if applicable, [\*\*];

**“Replacement Servicer”** means, at any time following a Servicer Transfer, the Person whom the Financial Services Agent designates from time to time by written notice given to the Seller in accordance with Section 5.13 as the Replacement Servicer;

**“Replacement Servicer Fee”** means, in respect of any Collection Period, if the Backup Servicer is the Replacement Servicer, the amount referred to in the Backup Servicing Agreement or Backup Servicing Fee Letter, and if a Person other than the Seller, an Affiliate of the Seller or the Backup Servicer is the Replacement Servicer, the actual fee payable to such Person, calculated and payable monthly based on the aggregate net book value of all Pool Receivables outstanding as at each Settlement Date;

“**Reporting Date**” means, in respect of a Collection Period, the 15th day of the following calendar month or, if such day is not a Business Day, the next following Business Day;

“**Required Enhancement Percentage**” means [\*\*] or such lesser percentage agreed to by the Seller and the Trust;

“**Salvage Vehicle**” means [\*\*];

“**Security Interest**” means a lien, security interest, hypothec, title retention agreement, pledge, assignment (whether or not by way of security), charge, encumbrance, mortgage, right of set-off, lease or other right or claim of any Person;

“**Seller’s Retained Interest**” has the meaning ascribed thereto in Section 2.3;

“**Seller’s Share**” means 100% minus the Trust’s Share;

“**Servicer**” means the Person designated as the Servicer for the time being pursuant to Sections 5.1 and 5.13 which shall be the Seller initially and, after a Servicer Transfer, means any Replacement Servicer (including, for greater certainty, the Backup Servicer to the extent it is the Replacement Servicer);

“**Servicer Report**” means a report substantially in the form of Schedule “C”;

“**Servicer Termination Event**” has the meaning ascribed thereto in Section 5.11;

“**Servicer Transfer**” has the meaning ascribed thereto in Section 5.12;

“**Settlement Date**” means, in respect of a Collection Period, the last day of the Collection Period;

“**Special Concentration Percentage**” means, as a percentage of the aggregate Eligible Receivables [\*\*] at such time, without duplication:

- (i) [\*\*];
- (ii) [\*\*];
- (iii) [\*\*];
- (iv) [\*\*];
- (v) [\*\*];
- (vi) [\*\*];
- (vii) [\*\*];
- (viii) [\*\*];
- (ix) [\*\*];

- (x) [\*\*];
- (xi) [\*\*];
- (xii) [\*\*]; and
- (xiii) [\*\*];

“**Special Obligors**” means any Obligors, together with their Affiliates, identified as a “Special Obligor” on the most recent Servicer Report by the Servicer;

“**Specialty Vehicles**” means [\*\*];

“**Specified Ineligible Receivable**” means any Pool Receivable that the Servicer has identified as a “Specified Ineligible Receivable” pursuant to Section 2.15;

“**Standard & Poor’s**” means Standard & Poor’s Rating Service, a division of The McGraw Hill Companies Inc., and its successors;

“**Standby Fee**” has the meaning ascribed thereto in the Fee Letter;

“**Tangible Net Worth**” means, with respect to any Person, the net worth of such Person calculated in accordance with GAAP after subtracting therefrom the aggregate amount of such Person’s intangible assets, including, without limitation, goodwill, franchises, licenses, patents, trademarks, tradenames, copyrights, service marks and brand names and capitalized software;

“**Tax**” means any withholding, stamp, general corporation, property, capital, large corporations, excise, GST, PST, sales or other tax or any fee, levy, assessment or other governmental charge, including any related penalties or interest (excluding any tax imposed upon the Trust with respect to its income);

“**Tax Credit**” has the meaning ascribed thereto in Section 9.5;

“**Term CORRA**” means, for the applicable corresponding tenor, the forward-looking term rate based on CORRA that has been selected or recommended by the Relevant Governmental Body, and that is published by an authorized benchmark administrator and is displayed on a screen or other information service, as identified or selected by the Financial Services Agent in its reasonable discretion at approximately a time and as of a date prior to the commencement of the applicable period, as determined by the Financial Services Agent in its reasonable discretion in a manner substantially consistent with market practice;

“**Term CORRA Notice**” means the notification by the Financial Services Agent to the Agents and the Trust of the occurrence of a Term CORRA Transition Event;

“**Term CORRA Transition Date**” means, in the case of a Term CORRA Transition Event, the date that is set forth in the Term CORRA Notice provided to the Agents and the Trust, for the replacement of the then-current Benchmark with the Benchmark Replacement described in clause

(a)(i) of such definition, which date shall be at least thirty (30) Business Days from the date of the Term CORRA Notice;

“**Term CORRA Transition Event**” means the determination by the Financial Services Agent that (a) Term CORRA has been recommended for use by the Relevant Governmental Body, and is determinable for any Available Tenor, (b) the administration of Term CORRA is administratively feasible for the Financial Services Agent and (c) a Benchmark Replacement, other than Term CORRA, has replaced CDOR in accordance with Section 1.10(a);

“**Termination Date**” means the earlier of:

- (a) the Trigger Date;
- (b) the latest Commitment Expiration Date; and
- (c) the date the Seller designates as the Termination Date upon 30 days’ notice to the Trust and the Financial Services Agent;

“**Tractor**” means [\*\*];

“**Transition Expenses**” means all reasonable costs and expenses (including reasonable legal fees) incurred by the Backup Servicer in connection with transferring servicing obligations under this Agreement, which shall not exceed the cap established in the Backup Servicing Agreement or the Backup Servicing Fee Letter;

“**Trigger Date**” means the day that, in accordance with Section 6.2, is declared as, or automatically becomes, the Trigger Date;

“**Trigger Event**” has the meaning ascribed thereto in Section 6.1;

“**Trust Notice Event**” means, following the occurrence of a KAR Financial Covenant Event, the Financial Services Agent has provided the Seller and the Trust with written notice of the Financial Services Agent’s declaration of a KAR Financial Covenant Termination Event;

“**Trust’s Co-Ownership Interest**” has the meaning ascribed thereto in Section 2.3;

“**Trust’s Share**” means on any Business Day before the Termination Date, the percentage computed as:

$$\frac{I + DP + LR}{NRPB}$$

where:

- I = the Investment at the time of computation, reduced by the aggregate amount deposited in the Collection Account on (i) with respect to any Servicer Report, the last Business Day of the immediately prior Collection Period,

or (ii) with respect to any Portfolio Certificate, the last Business Day of the prior calendar week, provided that in the case of each of (i) and (ii) above, an equal amount is wired to the Trust on the immediately following Remittance Date to pay down the Investment,

DP = the aggregate unfulfilled purchase amounts of the Trust at such time,

LR = the Loss Reserve at the time of computation,

NRPB = the Net Receivables Pool Balance at the time of computation,

and, on any Business Day on or after the Termination Date, the Trust's Share calculated as of the last Business Day prior to the Termination Date; and

“USA PATRIOT ACT” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended.

## **1.2 Headings**

The division of this Agreement into Articles, Sections, Schedules and other subdivisions, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms “this Agreement”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section, Schedule or other portion hereof and include the recitals and any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to particular Articles, Sections and Schedules are to the particular Articles, Sections and Schedules of this Agreement.

## **1.3 Number, Gender, Etc.**

Words importing the singular number shall include the plural and vice versa; words importing gender shall include all genders. Any use of the term “including” in this Agreement shall be read as, and shall mean, “including, without limitation”.

## **1.4 Non-Business Days**

Whenever any payment to be made hereunder shall be stated to be due or any action to be taken hereunder shall be stated to be required to be taken on a day other than a Business Day, unless otherwise specifically provided for herein, such payment shall be made or such action shall be taken on the next succeeding Business Day.

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### **1.5 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Each of the parties hereto hereby attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

### **1.6 References to Statutes**

All references herein to any statute or any provision thereof shall, unless otherwise specified herein, mean such statute or provision as the same may be amended, re-enacted or replaced from time to time.

### **1.7 Severability**

In the event that one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality or enforceability of the remaining provisions hereof shall not be affected or impaired thereby. Each of the provisions of this Agreement is hereby declared to be separate and distinct.

### **1.8 Currency**

All amounts expressed herein in terms of money refer to lawful currency of Canada and all payments to be made hereunder shall be made in such currency.

### **1.9 References to Acts of the Trust**

For greater certainty, where any reference is made in this Agreement or any Related Document, or in any other instrument executed pursuant hereto or thereto or contemplated hereby or thereby to which the Trust is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of Computershare Trust Company of Canada, in its capacity as trustee of AFCI Funding Trust) by or in respect of, the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of Computershare Trust Company of Canada, in its capacity as trustee of AFCI Funding Trust) by or in respect of, Computershare Trust Company of Canada, as trustee of AFCI Funding Trust, and, in connection therewith, the liability of Computershare Trust Company of Canada, in its capacity as trustee of AFCI Funding Trust, hereunder or thereunder shall be limited as contemplated in Section 10.1. The parties acknowledge that, to the extent that Computershare Trust Company of Canada, in its capacity as trustee of AFCI Funding Trust, is required to perform any covenants hereunder or under any Related Document, it may cause the Seller, in its capacity as administrative agent of the Trust, to perform such covenants.

### **1.10 Benchmark Replacement Setting**

Notwithstanding anything to the contrary herein or in any Related Document:



- (a) Replacing CDOR. On May 16, 2022, Refinitiv Benchmark Services (UK) Limited (“RBSL”), the administrator of CDOR, announced in a public statement that the calculation and publication of all tenors of CDOR will permanently cease immediately following a final publication on Friday, June 28, 2024. On the date that all Available Tenors of CDOR have either permanently or indefinitely ceased to be provided by RBSL (the “CDOR Cessation Date”), if the then-current Benchmark is CDOR, the Benchmark Replacement will replace such Benchmark for all purposes hereunder and under the Related Documents 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 the Loan Agreement. If the Benchmark Replacement is Daily Compounded CORRA, all interest payments will be payable on a monthly basis.
  - (b) Replacing Future Benchmarks. Upon the occurrence of a Benchmark Transition Event, the Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder and under the Related Documents in respect of any Benchmark setting at or after 5:00 p.m. (Toronto time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Agents without any amendment to, or further action or consent of any other party to, this Agreement or the Loan Agreement so long as the Financial Services Agent has not received, by such time, written notice of objection to such Benchmark Replacement from the Agents. 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 administrator or 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 Trust may revoke any request for a borrowing of Loans to be made that would bear interest by reference to such Benchmark until the Trust’s receipt of notice from the Financial Services Agent that a Benchmark Replacement has replaced such Benchmark.
  - (c) Benchmark Replacement Conforming Changes. In connection with the implementation and administration of a Benchmark Replacement, the Financial Services 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 Related 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.
  - (d) Notices; Standards for Decisions and Determinations. The Financial Services Agent will promptly notify the Trust and the Agents of (i) the implementation of any Benchmark Replacement, (ii) any occurrence of a Term CORRA Transition Event, and (iii) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by the Financial Services Agent pursuant to this Section 1.10, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence
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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 1.10.

- (e) Unavailability of Tenor of Benchmark. At any time (including in connection with the implementation of a Benchmark Replacement), if the then-current Benchmark is a term rate (including Term CORRA or CDOR), then (i) the Financial Services Agent may remove any tenor of such Benchmark that is unavailable or non-representative for Benchmark (including Benchmark Replacement) settings and (ii) the Financial Services Agent may reinstate any such previously removed tenor for Benchmark (including Benchmark Replacement) settings.
- (f) Secondary Term CORRA Conversion. Notwithstanding anything to the contrary herein or in the Loan Agreement and subject to the proviso below in this Section 1.10(f), if a Term CORRA Transition Event and its related Term CORRA Transition Date have occurred, then on and after such Term CORRA Transition Date (i) the Benchmark Replacement described in clause (a)(i) of such definition will replace the then-current Benchmark for all purposes hereunder or under the Related Documents 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 the Loan Agreement; and (ii) each Loan outstanding on the Term CORRA Transition Date bearing interest based on the then-current Benchmark shall convert, at the start of the next Collection Period, into a Loan bearing interest at the Benchmark Replacement described in clause (a)(i) of such definition for the respective Available Tenor as selected by the Financial Services Agent as is available for the then-current Benchmark; provided that, this Section 1.10(f) shall not be effective unless the Financial Services Agent has delivered to the Agents and the Trust a Term CORRA Notice.

## **1.11 Schedules**

The following Schedules annexed hereto are incorporated herein by reference and are deemed to be part hereof:

- Schedule “A” - Form of Purchase Request
- Schedule “B” - Location of Records
- Schedule “C” - Form of Servicer Report
- Schedule “D” - Form of Portfolio Certificate
- Schedule “E” - Deposit Accounts
- Schedule “F” - Form of Increase Request
- Schedule “G” - Form of Quebec Assignment

Schedule "H" - Net Receivables Pool Balance Calculation

**ARTICLE 2  
PURCHASES AND INCREASES**

**2.1 Purchase Request and Increase**

- (a) Concurrently with the execution of this Agreement, the Seller shall, by delivery of an appropriately completed Purchase Request to the Trust, the Agents and the Financial Services Agent, request the Trust to purchase an undivided co-ownership interest in the Receivables Pool from the Seller. The Purchase Request shall specify (i) the amount of the Cash Payments to be paid to the Seller (which shall not be less than \$30 million and shall be an integral multiple of \$100,000) and the Net Cash Payment to be paid to the Seller, and (ii) the date of such Purchase.
  - (b) From time to time after the initial Purchase hereunder up to the Termination Date, the Seller may, by delivery of an appropriately completed Increase Request delivered to the Trust at least one Business Day prior to the date of the proposed Increase, request the Trust to increase the Investment and the amount of its undivided co-ownership interest in the Receivables Pool. The Increase Request shall specify, (i) the amount of the Cash Payment and the Net Cash Payment to be paid to the Seller, (ii) the date of such Increase (which shall be a Remittance Date), and (iii) the account number of the Seller into which the Net Cash Payment should be deposited.
  - (c) Notwithstanding the foregoing, the Trust may, if so directed by the Financial Services Agent, acting at the direction of any Agent, by written notice to the Seller and the Servicer by 5:00 p.m. on the date of receipt of an Increase Request, elect to fund the related Agent's requested Increase no later than the [\*\*] day following the Seller's delivery of an Increase Request (the "**Deferred Increase Date**"), rather than on the requested Increase date. In the event that the Trust, as directed by any Agent, so elects to defer funding an Increase, subject to the adjustment of the Investment for certain purposes as described in Section 2.1(d), the Trust shall be obligated to fund such Increase no later than such Deferred Increase Date so long as all applicable conditions precedent to such Increase pursuant to Section 3.2 were satisfied on the related requested Increase date (regardless of whether such conditions precedent to funding are not satisfied thereafter or on the Deferred Increase Date). The Trust may (if so directed by the related Agent) fund such Increase on any Business Day prior to such Deferred Increase Date. Subject to any adjustment of the Cash Payment payable as described in Section 2.1(d), the Seller shall be obligated to accept the proceeds of any such Increase on the date funded by the Trust.
  - (d) Future Increase Requests and reports shall be calculated on a pro forma basis including any unfulfilled Increases in the calculation of the Investment (e.g., the calculation of the Trust's Share shall include such unfulfilled Increases). For the avoidance of doubt, any payments required by clause (c) of the definition of
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Paydown Date shall be satisfied first by reducing the current balance of any unfulfilled Increases to zero before allocating the Trust's Share of Collections to the Trust.

## **2.2 Purchase and Sale**

- (a) If the conditions precedent in Section 3.1 (in the case of the Purchase hereunder) and Section 3.2 are satisfied or have not been satisfied but have been waived by the Trust and the Financial Services Agent on the date specified in the Purchase Request, the Seller shall sell, assign and transfer to the Trust, and the Trust shall purchase, an undivided co-ownership interest in the Receivables Pool, having the terms and attributes and conferring upon the Trust the entitlements and property rights set out in Section 2.3, for the Purchase Price applicable to the Purchase, and the Trust shall deposit or cause to be deposited the applicable Cash Deposit Amount into the Cash Reserve Account and pay or cause to be paid to the Seller the Net Cash Payment in respect thereof on the date of such Purchase. Upon the making of such payment and deposit, all of the Seller's right, title and interest in and to an undivided co-ownership interest in the Receivables Pool shall be sold, assigned and transferred to the Trust on a fully serviced basis without recourse (except as provided by this Agreement), without the need of any formality or other instrument of assignment.
  - (a) If the conditions precedent in Section 3.2 are satisfied or have not been satisfied but have been waived by the Trust and the Financial Services Agent on the date specified in an Increase Request, the Seller shall sell, assign and transfer to the Trust, and the Trust shall purchase, an additional undivided co-ownership interest in the Receivables Pool, having the terms and attributes and conferring upon the Trust the entitlements and property rights set out in Section 2.3, for the additional Purchase Price applicable to the Increase, and the Trust shall deposit or cause to be deposited the applicable Cash Deposit Amount into the Cash Reserve Account and pay or cause to be paid to the Seller the Net Cash Payment in respect thereof on the date of such Increase and thereafter the Investment shall be increased by the amount of the Cash Payment and the Trust's Share shall be calculated based on such increased Investment. Upon the making of such payment and deposit pursuant to the Increase Request, an additional interest in the Receivables Pool shall be sold, assigned and transferred to the Trust on a fully serviced basis without recourse (except as provided by this Agreement), without the need of any formality or other instrument of assignment, such that the Trust's Share shall be calculated based on such increased Investment.
  - (b) In addition to Sections 2.2(a) and 2.2(b), but subject to the last sentence of this Section 2.2(c), the Seller shall, on the date hereof, execute and deliver to the Trust the Quebec Assignment. For greater certainty, to the extent there is any conflict or inconsistency between this Agreement and the Quebec Assignment, the Quebec Assignment shall govern.
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### **2.3 Ownership Interests**

The undivided co-ownership interests in the Receivables Pool to be conveyed to and owned by the Trust pursuant to the terms hereof shall constitute and comprise property interests in the Receivables Pool that shall entitle the Trust to receive amounts from the Trust's Share of Collections from Receivables and other amounts constituting the Receivables Pool in the amounts, at the times and on the terms and conditions herein provided. Such undivided co-ownership interest is not intended and shall not be construed as merely a contractual or personal right against the Seller but rather as an interest in rem. The undivided co-ownership interest in the Receivables Pool acquired by the Trust by way of the Purchase and any Increases in accordance with Section 2.1 are collectively referred to herein as the "Trust's Co-Ownership Interest." The undivided ownership interest in the Receivables Pool not constituting the Trust's Co-Ownership Interest shall be retained by the Seller and shall constitute and comprise property interests in the Receivables Pool that shall entitle the Seller to receive amounts from the Seller's Share of Collections from Receivables and other amounts constituting the Receivables Pool in the amounts, at the times and on the terms and conditions herein provided. Such undivided ownership interest in the Receivables Pool not constituting the Trust's Co-Ownership Interest is referred to herein as the "**Seller's Retained Interest**". The Seller and Trust shall hold the Seller's Retained Interest and Trust's Co- Ownership Interest, respectively, as tenants in common.

### **2.4 Transfer From Deposit Accounts to Collection Account**

On each Business Day, all amounts on deposit in each Deposit Account shall be transferred by the Servicer from such Deposit Account to the Collection Account.

### **2.5 Allocations of Seller's Share of Collections Before the Termination Date**

The Seller hereby authorizes and directs the Servicer, on each Business Day which is prior to the occurrence of the Termination Date, to allocate from the Seller's Share of Collections for such day, the following amounts in the following order:

- (a) on a *pro rata* and *pari passu* basis, (i) to the Issuer Trustee, an amount equal to the Seller's Share of the Issuer Trustee Fees, and any arrear thereof, (ii) to the Replacement Servicer, an amount equal to the Seller's Share of the sum of any Replacement Servicer Fee and any Collection Costs, and any arrear thereof, and (iii) to the Backup Servicer, the Seller's Share of any Backup Servicing Fees and Transition Expenses, and any arrear thereof;
  - (b) in respect of the Cash Reserve Account, the amount, if any, by which the balance on deposit in the Cash Reserve Account is less than the Cash Reserve Required Amount; and
  - (c) as to any remaining balance (i) to the extent any Enhancement Build Trigger is in effect, then either, as specified by the Seller or the Servicer, (x) to be retained in the Deposit Accounts or Collection Account until the following Business Day for allocation pursuant to Section 2.5 or 2.8, as applicable, on such following Business Day, (y) to reduce the Investment pursuant to Section 2.12, or (z) to the Seller on account of the Seller's Retained Interest to originate Eligible Receivables (provided
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that the amount paid to the Seller under this clause (z) shall not exceed [\*\*] of the par amount of such originated Eligible Receivables), or (ii) if no Enhancement Build Trigger is in effect, first, to the Administrative Agent in reimbursement of the Seller's Share of any properly incurred expenses under the Administration Agreement, with any balance to be allocated to the Seller on account of the Seller's Retained Interest.

## **2.6 Allocation of Trust's Share of Collections Before the Termination Date**

The Trust hereby authorizes and directs the Servicer, on each Business Day which is prior to the occurrence of the Termination Date, to allocate from the Trust's Share of Collections for such day and from amounts available in the Cash Reserve Account pursuant to Section 2.13, the following amounts in the following order of priority:

- (a) on a *pro rata* and *pari passu* basis, (i) to the Issuer Trustee, an amount equal to the Trust's Share of the Issuer Trustee Fees, and any arrear thereof, (ii) to the Replacement Servicer, an amount equal to the Trust's Share of the sum of any Replacement Servicer Fee and any Collection Costs, and any arrear thereof, and (iii) to the Backup Servicer, the Trust's Share of the Backup Servicing Fees and Transition Expenses, and any arrear thereof;
  - (b) to each Lender, on a *pro rata* and *pari passu* basis, an amount equal to the sum of the Lender Finance Charges and the Standby Fees accrued to such Lender through such day;
  - (c) into the Cash Reserve Account, the amount, if any (after giving effect to Section 2.5(b)), by which the balance on deposit in the Cash Reserve Account is less than the Cash Reserve Required Amount;
  - (d) to each Lender, on a *pro rata* basis, if a voluntary reduction of the Investment is being made, for application in reduction of the Loan Amount associated with such portion of the Investment in accordance with Section 2.12;
  - (e) to each Lender, on a *pro rata* basis, subject to Section 2.1(d), if such Business Day is a Paydown Date, an amount up to the Loan Amount for application in reduction of the Loan Amount associated with the Investment; provided that if a Paydown Date has occurred pursuant to clause (c) of the definition of Paydown Date, the amount to be applied in reduction of the Loan Amount associated with the Investment shall only be the amount (subject to such amounts being in integral multiples of \$100,000) necessary to cause the Trust's Share to be reduced to an amount equal to or less than 100%;
  - (f) to the relevant Indemnified Party, an amount equal to the aggregate amounts owed to such Indemnified Party pursuant to Sections 9.1 or 9.4 that remain unpaid;
  - (g) to each Lender, on a *pro rata* basis, any other amounts owing to such Lender hereunder and under the Related Documents;
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- (h) if such Business Day is the first Business Day of a Collection Period, \$100 to be retained by the Trust for distribution to the beneficiary of the Trust in accordance with the Declaration of Trust; and
- (i) as to any remaining balance (i) to the extent any Enhancement Build Trigger is in effect, then either, as specified by the Seller or the Servicer, (x) to be retained in the Deposit Accounts or Collection Account until the following Business Day for allocation pursuant to Section 2.6 or 2.9, as applicable, on such following Business Day, (y) to be allocated to reduce the Investment pursuant to Section 2.12, or (z) to be allocated to the Seller on account of Deferred Purchase Price to originate Eligible Receivables (provided that the amount allocated to the Seller under this clause (z) shall not exceed [\*\*] of the par amount of such Eligible Receivables), or (ii) if no Enhancement Build Trigger is in effect, first, to the Administrative Agent in reimbursement of the Trust's Share of any properly incurred expenses under the Administration Agreement, with any balance to be allocated to the Seller on account of Deferred Purchase Price, but only to the extent no Paydown Date exists or would result from such allocation.

## **2.7 Payments from Collection Account**

Amounts on deposit in the Collection Account deposited pursuant to Section 2.4 shall be paid out and applied by the Servicer as follows:

- (a) amounts allocated for the benefit of the Issuer Trustee, the Replacement Servicer and the Backup Servicer pursuant to Sections 2.5(a) and 2.6(a) shall be paid to the Issuer Trustee, the Replacement Servicer and the Backup Servicer, as applicable, when due and payable;
  - (b) amounts allocated pursuant to Sections 2.5(b) and 2.6(c) shall be deposited to the Cash Reserve Account;
  - (c) amounts allocated pursuant to Section 2.6(b) and Section 2.6(g) shall be paid to the Lenders no later than the third Remittance Date of each applicable calendar month;
  - (d) amounts allocated pursuant to Sections 2.5(c)(i)(y), 2.6(d), 2.6(e) and 2.6(i)(i)(y) shall be paid to the Lenders on each Remittance Date and the Investment shall be correspondingly reduced by the amounts distributed and applied pursuant to such Sections;
  - (e) amounts allocated for the benefit of an Indemnified Party pursuant to Section 2.6(f) shall be paid when due and payable to such Indemnified Party or as such Indemnified Party may otherwise direct; and
  - (f) amounts allocated pursuant to Section 2.5(c)(ii) shall be paid to the Administrative Agent in respect of reimbursed expenses, if applicable, and to the Seller in respect of the Seller's Retained Interest on each Business Day and amounts allocated pursuant to Section 2.6(i)(ii) shall be paid to the Administrative Agent in respect of
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reimbursed expenses, if applicable, and to the Seller in respect of Deferred Purchase Price on each Business Day.

For greater certainty, priority shall be determined by the priority of allocations under Sections 2.5 and 2.6 and not by the order in which payments and deposits are referred to in this Section 2.7.

**2.8 Allocation and Payment of Seller's Share of Collections After a Termination Date**

The Seller hereby authorizes and directs the Servicer, on each Business Day on or after the occurrence of a Termination Date, to allocate from the Seller's Share of Collections for such day, the following amounts in the following order:

- (a) on a *pro rata* and *pari passu* basis, (i) to the Issuer Trustee, an amount equal to the Seller's Share of the Issuer Trustee Fees, and any arrearages thereof, (ii) to the Replacement Servicer, an amount equal to the Seller's Share of the sum of any Replacement Servicer Fee and any Collection Costs, and any arrearages thereof, and (iii) to the Backup Servicer, the Seller's Share of any Backup Servicing Fees and Transition Expenses, and any arrearages thereof;
- (b) to the relevant Indemnified Party, an amount equal to the aggregate amounts owed to such Indemnified Party pursuant to Sections 9.1 or 9.4 that remain unpaid; and
- (c) the balance, first, to the Administrative Agent in reimbursement of the Seller's Share of any properly incurred expenses under the Administration Agreement, with any remaining balance to the Seller, on account of the Seller's Retained Interest.

**2.9 Allocation of Trust's Share of Collections After a Termination Date**

The Trust hereby authorizes and directs the Servicer, on each Business Day which is on or after the Termination Date, to allocate from the Trust's Share of Collections for such day and amounts available in the Cash Reserve Account pursuant to Section 2.13, the following amounts in the following order of priority:

- (a) on a *pro rata* and *pari passu* basis, (i) to the Issuer Trustee, an amount equal to the Trust's Share of the Issuer Trustee Fees, and any arrearages thereof, (ii) to the Replacement Servicer, an amount equal to the Trust's Share of the sum of any Replacement Servicer Fee and any Collection Costs, and any arrearages thereof, and (iii) to the Backup Servicer, the Trust's Share of the Backup Servicing Fees and Transition Expenses, and any arrearages thereof;
  - (b) to each Lender, on a *pro rata* basis, an amount equal to the Lender Finance Charges accrued to such Lender through such day;
  - (c) to each Lender, on a *pro rata* basis, an amount equal to such Lender's Loan Amount;
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- (d) to the extent the amounts payable under Section 2.8(b) have not been satisfied in full, to the relevant Indemnified Party, an amount equal to the aggregate amounts owed to such Indemnified Party pursuant to Sections 9.1 or 9.4 that remain unpaid;
- (e) to each Lender, on a *pro rata* basis, any other amounts owing to such Lender hereunder and under the Related Documents;
- (f) if such Business Day is the first Business Day of a Collection Period, \$100 to be retained by the Trust for distribution to the beneficiary of the Trust in accordance with the Declaration of Trust; and
- (g) the balance, first, to the Administrative Agent in reimbursement of the Trust's Share of any properly incurred expenses under the Administration Agreement, with any remaining balance to the Seller, as Deferred Purchase Price.

**2.10 Payments from Collection Account After a Termination Date**

Amounts on deposit in the Collection Account deposited pursuant to Section 2.4 shall be paid out and applied by the Trust as follows:

- (a) amounts held on deposit for the benefit of the Issuer Trustee pursuant to Sections 2.8(a) and 2.9(a) shall be paid to the Issuer Trustee when due and payable;
  - (b) amounts held on deposit for the benefit of the Replacement Servicer pursuant to Sections 2.8(a) and 2.9(a) shall be paid to the Replacement Servicer when due and payable;
  - (c) amounts held on deposit for the benefit of the Backup Servicer pursuant to Sections 2.8(a) and 2.9(a) shall be paid to the Backup Servicer when due and payable;
  - (d) amounts held on deposit for the benefit of an Indemnified Party pursuant to Sections 2.8(b) and 2.9(d) shall be paid to such Indemnified Party or as such Indemnified Party may otherwise direct, when due and payable;
  - (e) amounts allocated pursuant to Sections 2.9(b) and 2.9(e) shall be paid to the Lenders on such dates as the Financial Services Agent may determine;
  - (f) amounts allocated pursuant to Section 2.9(c) shall be paid to the Lenders on each Remittance Date and the Investment shall be correspondingly reduced by such amounts distributed; and
  - (g) amounts allocated pursuant to Section 2.8(c) shall be paid to the Administrative Agent in respect of reimbursed expenses, if applicable, and to the Seller in respect of the Seller's Retained Interest on each Business Day and amounts allocated pursuant to Section 2.9(g) shall be paid to the Administrative Agent in respect of reimbursed expenses, if applicable, and to the Seller on account of Deferred Purchase Price on each Business Day.
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For greater certainty, priority shall be determined by the priority of allocations under Sections 2.8 and 2.9 and not by the order in which payments and deposits are referred to in this Section 2.10.

### **2.11 Purchases Limited by Program Limit**

No Purchase or Increase may be made hereunder if, after giving effect thereto, the Investment would exceed the Program Limit.

### **2.12 Voluntary Paydown of Investment**

If at any time the Seller wishes to reduce the Investment, the Seller shall (i) provided the reduction can be fully paid on a Remittance Date, provide details thereof in a Servicer Report or Portfolio Certificate one day prior to such Remittance Date, or (ii) give the Trust, the Financial Services Agent, the Servicer and the Backup Servicer at least two Business Days' prior written notice thereof (including the amount of such proposed reduction and the proposed date on which such reduction will commence) in the form of "Paydown Notice" attached to the Loan Agreement.

Following the delivery of such notice, on the proposed date of commencement of such reduction and on each day thereafter, the Servicer shall allocate all amounts available for allocation under Section 2.6(d) to the Lenders until the aggregate amount allocated shall equal the desired amount of reduction, provided that,

- (a) unless otherwise agreed by the Trust and the Financial Services Agent, the amount of any such reduction shall be not less than \$1 million and shall be an integral multiple of \$1 million, and the Investment after giving effect to such reduction shall be not less than \$30 million, and
- (b) the Seller shall use reasonable efforts to choose a reduction amount, and the date of commencement thereof, so that to the extent practicable such reduction shall commence and conclude in the same Collection Period.

### **2.13 Cash Reserve Account**

To the extent that on any Business Day before the Termination Date the Trust's Share of Collections is less than the sum of the amounts referred to in Sections 2.6(a) and 2.6(b), the Trust shall apply, by deposit to the Collection Account, any amounts on deposit in the Cash Reserve Account to make the allocations specified in Sections 2.6(a) and 2.6(b) on such Business Day. On each Remittance Date prior to the Termination Date, any Cash Reserve Excess Amount shall, if requested by the Seller, be paid to the Seller on account of Deferred Purchase Price. On the Termination Date, the balance of the Cash Reserve Account shall be deposited to the Collection Account and applied under Section 2.9.

### **2.14 Calculations**

In making all allocation and payments of Collections and amounts on deposit in the Cash Reserve Account hereunder, the Servicer shall use the information contained in the most recently delivered Servicer Report or Portfolio Certificate, as applicable, including any Servicer Report or Portfolio Certificate delivered on the day of such allocation or payment.

## **2.15 Specified Ineligible Receivables**

At any time prior to a Receivable first being referenced in a Servicer Report or a Portfolio Certificate as an Eligible Receivable, the Servicer (so long as the Seller is the Servicer) may designate such Receivable as a “Specified Ineligible Receivable” (which designation may take the form of a specification that a certain class or category of Receivables to be created after such designation will be treated as “Specified Ineligible Receivables”). In addition, the Servicer (so long as the Seller is the Servicer) may, on behalf of the Seller, (i) designate an existing Receivable as a “Specified Ineligible Receivable” or (ii) designate an existing Specified Ineligible Receivable as a Receivable (i.e., no longer a “Specified Ineligible Receivable”), in each of cases (i) and (ii) with the prior written consent of the Trust, the Agents and the Financial Services Agent. For the avoidance of doubt, any Receivable which was treated as an Eligible Receivable hereunder at any time may not be treated as a “Specified Ineligible Receivable” without the prior written consent of the Trust, the Agents and the Financial Services Agent. The Servicer (so long as the Seller is the Servicer) shall identify the aggregate Principal Balance of all such “Specified Ineligible Receivables” on each Servicer Report. To the extent the Servicer has from time to time identified a Receivable as a “Specified Ineligible Receivable” in accordance with this Section 2.15, for so long as such Receivable is a Specified Ineligible Receivable, such Receivable (i) shall not be included as an Eligible Receivable by the Seller or the Servicer hereunder, (ii) shall not be included in any calculations of the Delinquency Ratio or the Default Ratio or other Receivables Pool information (other than a statement of the aggregate Principal Balance of such Specified Ineligible Receivables) hereunder and (iii) shall not be considered a Receivable for purposes of Section 6.1.

## **2.16 Collection Account**

Subject to this Section 2.16, the Servicer shall be entitled to access the Collection Account and the Collections deposited therein, and may withdraw funds deposited to the Collection Account and payable to the Seller pursuant to Sections 2.7(f) and 2.10(g) prior to the relevant Remittance Date. Notwithstanding anything else contained in this Agreement, the Financial Services Agent may notify the Servicer that it no longer wishes the Servicer to have the access rights described in this Section 2.16 and/or to be authorized to allocate and pay the amounts referred to in Sections 2.5, 2.6, 2.7, 2.8, 2.9 and 2.10. Upon receipt of such notice, the Servicer will have no further access or other rights with respect to the Collection Account and the Financial Services Agent, or its nominees, will assume the duties of the Servicer under the aforementioned Sections 2.5 through 2.10.

## **2.17 Location of Cash Reserve Account and Collection Account.**

If at any time the Bank of Montreal (or any subsequent Eligible Institution) ceases to be an Eligible Institution, the Servicer (on the Seller’s behalf) shall promptly establish a new Cash Reserve Account and a new Collection Account at a financial institution which is an Eligible Institution and transfer all amounts on deposit in such accounts at the Bank of Montreal (or any subsequent Eligible Institution) to such new accounts at such financial institution, until such time as the Bank of Montreal (or any subsequent Eligible Institution) meets the Eligible Institution requirements.

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## **2.18 Legal Final Maturity Date**

All obligations of the Seller hereunder shall be due and payable in full on the Legal Final Maturity Date (unless due and payable earlier than such date in accordance with the provisions hereof).

## **ARTICLE 3 CONDITIONS PRECEDENT**

### **3.1 Conditions Precedent for the Initial Purchase**

Prior to the Purchase occurring hereunder, the following shall have occurred, or the Seller shall have delivered to the Trust, the Agents and the Financial Services Agent, the following, as the case may be, in each case in form and substance satisfactory to the Trust, the Agents and the Financial Services Agent, acting reasonably:

- (a) a certificate of an officer of the Seller attaching copies of its constating documents;
  - (b) a certificate of status for the Seller in the Province of Ontario and a certificate of compliance for the Performance Guarantor in the State of Delaware;
  - (c) resolutions of the board of directors of the Seller approving and authorizing the execution, delivery and performance of this Agreement, the Related Documents to which it is a party and the other documents to be delivered by the Seller hereunder, and the Purchase and any Increase hereunder up to the Program Limit, certified by a senior officer of the Seller to be in full force and effect as of the Initial Closing Date;
  - (d) incumbency certificates of the officers of the Seller executing this Agreement, the Related Documents to which it is a party and the other documents to be delivered by the Seller hereunder showing their names, offices and specimen signatures on which certificates the Trust, the Agents and the Financial Services Agent shall be entitled to conclusively rely until such time as the Trust, the Agents and the Financial Services Agent receive from the Seller a replacement certificate meeting the requirements of this Section 3.1(d);
  - (e) a copy of the Credit and Collection Policies and sample copies of each of the forms of Contract and other documents used or acquired by the Seller in each of the provinces of Canada with respect to Financed Vehicles and the Related Security, including credit application forms;
  - (f) reports showing the results of the searches conducted in the Provinces of Ontario and Quebec against the Seller and its predecessors on the Business Day immediately preceding the Initial Closing Date to determine the existence of any Security Interests in the Pool Assets;
  - (g) copies of verification statements, officially stamped or marked to indicate that copies of such documents have been filed with the appropriate Governmental Authorities in the Provinces of Ontario and Quebec or, if officially stamped copies
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are not available prior to the Initial Closing Date, photocopies of documents accepted for filing or registration, of all financing statements or other similar statements or other registrations, if any, filed in such province or provinces with respect to the Purchase to ensure recognition as against third parties of the interests of the Trust in the Pool Assets; in each case showing the Seller's address as 1717 Burton Road, Vars, Ontario, K0A 3H0;

- (h) evidence that such Persons as the Agents and the Financial Services Agent may have designated who have registered financing statements or similar instruments against the Seller shall have entered into such agreements or acknowledgements or amended their registrations, filings or recordings so as to negate any Security Interest or other interest in the Pool Assets capable of encumbering or defeating the interests of the Trust therein;
- (i) executed copies of this Agreement, the Loan Agreement, the Fee Letter, the Quebec Assignment and the other agreements and instruments called for hereunder;
- (j) an opinion of counsel to the Seller (including certain matters under Quebec Law) dated as of the Initial Closing Date, which opinions may rely on an officer's certificate of the Seller as to certain factual matters;
- (k) an opinion of counsel to the Performance Guarantor dated as of the Initial Closing Date;
- (l) Blocked Account Agreements with respect to (i) the Deposit Accounts executed by the banks or other financial institutions at which each of the Deposit Accounts are located, and (ii) the Collections Account and Cash Reserve Account, shall have been executed and delivered to the Trust, the Agents and the Financial Services Agent in form satisfactory to the Trust, the Agents and the Financial Services Agent; and
- (m) such other documentation as may be required by the Financial Services Agent or the Agents or their counsel, McCarthy Tétrault LLP or the Seller or the Trust or their counsel, Osler Hoskin & Harcourt LLP, acting reasonably.

### **3.2 Conditions Precedent in Favour of the Trust for Purchase/All Increases**

Prior to the Purchase and all Increases hereunder, the following shall have occurred, or the Seller shall have delivered to the Trust, the Agents and the Financial Services Agent the following, as the case may be, in each case in form and substance satisfactory to the Trust and the Financial Services Agent, acting reasonably:

- (a) the Purchase Request or Increase Request duly executed by the Seller;
  - (b) immediately prior to, at the time of and after giving effect to the Purchase or Increase, the following statements will be true, and the Seller, by accepting any payment pursuant to Section 2.2 in respect of the Purchase or any Increase, will be deemed to have certified that:
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- (i) the representations and warranties of the Seller contained in Section 4.1 are correct on and as of the date of purchase as though made on and as of such date; and
  - (ii) no event has occurred and is continuing, or would result from the effecting of such Purchase or Increase, that constitutes a Trigger Event or would constitute a Trigger Event by further requirement that notice be given or time elapse or both; and
  - (iii) as long as the Seller is the administrative agent of the Trust, the Trust is in compliance with the Programme Agreements to which it is a party; and
- (c) all other documents, instruments, opinions and agreements required by the terms hereof to be delivered to the Trust, the Agents and the Financial Services Agent shall have been so delivered and shall be satisfactory in form and substance to the Trust and the Financial Services Agent, acting reasonably, and the Trust, the Agents and the Financial Services Agent shall have received such other approvals, opinions or documents as they may reasonably request.

#### **ARTICLE 4 REPRESENTATIONS AND WARRANTIES**

##### **4.1 General Representations and Warranties of the Seller**

The Seller (in its capacity as Seller and as Servicer) represents and warrants to the Trust, the Agents and the Financial Services Agent, and acknowledges that each of the Trust, the Agents and the Financial Services Agent is relying upon such representations and warranties in consummating the transactions contemplated hereby and by the Related Documents, that as of the Closing Date and as of the date of each Increase:

- (a) the Seller is a corporation duly incorporated and existing under its jurisdiction of incorporation, the Seller is not a “non-resident” of Canada for the purposes of the *Income Tax Act* (Canada) and the Seller is duly qualified, licensed or registered in each of the provinces of Canada to carry on its present business and operations, except where the failure to be so qualified, licensed or registered could not reasonably be expected to have a Material Adverse Effect;
  - (b) the execution, delivery and performance by the Seller of this Agreement, the Related Documents to which it is a party, and all other instruments, agreements and documents to be delivered by it hereunder, and the transactions contemplated hereby and thereby, are within the Seller’s powers, have been duly authorized by all necessary corporate action and do not contravene (i) the Seller’s constating documents or by-laws, (ii) any resolution of its board of directors (or any committee thereof) or shareholders or (iii) any law or any contractual restriction binding on or affecting the Seller (including pursuant to any indentures, loan or credit agreements, leases, mortgages or security agreements), the contravention of which could reasonably be expected to have a Material Adverse Effect, and do not result in or require the creation of any Security Interest (other than any Security Interest created
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pursuant to this Agreement and the Related Security, the Blocked Account Claims, or Security Interests permitted by this Agreement), upon or with respect to any of its properties, and the consummation of the transactions contemplated hereby does not require approval of shareholders or approval or consent of any Person under any contract to which the Seller is a party;

- (c) no authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body is required for the due execution, delivery and performance by the Seller of this Agreement, the Related Documents to which it is a party, or any other instrument, agreement or document to be delivered hereunder or thereunder except (i) those that have already been given, filed or obtained, as the case may be, and (ii) financing statements filed in favour of the Trust;
  - (d) this Agreement, the Related Documents to which it is a party, and the other instruments, agreements and documents executed in connection herewith constitute legal, valid and binding obligations of the Seller enforceable against it in accordance with their terms, subject to (a) applicable bankruptcy, reorganization, winding-up, insolvency, moratorium and other laws of general application limiting the enforcement of creditors' rights; (b) the fact that the granting of equitable remedies such as specific performance and injunction is within the discretion of a court of competent jurisdiction; and (c) general principles of equity;
  - (e) all filings, recordings, registrations or other actions required under this Agreement and the Related Documents to which it is a party have been made or taken in Ontario (the parties acknowledge that in Quebec such filings, recordings, registrations or other actions shall be taken immediately following closing), in order to validate, preserve, perfect or protect the interests (including the co-ownership interest) of the Trust in, and the rights of the Trust to collect, any and all of the Pool Assets, including the right to enforce the Related Security;
  - (f) as of the date hereof, the chief executive office of the Seller is located in Ontario and the books, Records and documents related to the Receivables in which the Seller has an interest and other printed information (excluding policies or certificates of insurance) evidencing or relating to the Pool Assets, the Obligors and the related Financed Vehicles are located at the offices shown in Schedule "B";
  - (g) the Records contain all information reasonably necessary for the enforcement and Collection by the Trust of the Pool Assets, including the name, address and phone number of each Obligor, the Principal Balance and any accrued interest and fees on each Pool Receivable, the vehicle identification number of each related Financed Vehicle and the payment history of the Obligor with respect to each Pool Receivable, as such information may change from time to time;
  - (h) each Servicer Report and Portfolio Certificate fully and accurately summarizes the information contained therein and reflects all of the Pool Receivables and the adjusted Principal Balances;
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- (i) there is no order, judgment or decree of any court, arbitrator or similar tribunal or Governmental Authority purporting to enjoin or restrain, and there are no proceedings before any court, arbitrator or similar tribunal or Governmental Authority seeking to enjoin or restrain the Seller from effecting the Purchase or any Increase hereunder, or the Seller, its agents or the Trust from making any collection in respect thereof, which could reasonably be expected to have a Material Adverse Effect;
  - (j) there are no actions, suits or proceedings in existence or, to the knowledge of the Seller, pending or threatened, against or affecting the Seller or its Affiliates, or the property of the Seller or of any such Affiliates, in any court, or before any arbitrator of any kind, or before or by any governmental body, which could reasonably be expected to have a Material Adverse Effect;
  - (k) the transactions contemplated herein do not require compliance with any bulk sales or similar legislation of any Canadian jurisdiction;
  - (l) all documents, computer files, microfiche or other records and materials containing information or disclosure relating to the Seller, the Backup Servicer, the Performance Guarantor, the Obligors, the Financed Vehicles and the Pool Assets made available to the Trust, the Agents and the Financial Services Agent from time to time will be true and correct in all material respects;
  - (m) the computer records of the Seller which contain particulars of the Pool Assets will contain notations, marks or other designations sufficient to identify that an interest in the Pool Assets has been sold by the Seller to the Trust hereunder;
  - (n) the Records relating to the Pool Assets are current and reflect all material transactions between the Seller and the Obligors under such Pool Assets and any other Person in respect thereof;
  - (o) each Pool Receivable included as an Eligible Receivable in the calculation of the Net Receivables Pool Balance is an Eligible Receivable as of the date of such calculation;
  - (p) the Credit and Collection Policies in their current form do not contain any amendments or new policies or practices when compared to the historical policies and practices of the Servicer that would have adversely affected the historical collection results that have been furnished to the Trust, the Agents and the Financial Services Agent;
  - (q) since December 31, 2021, there has been no material adverse change in the business, operations, property or financial condition of the Seller or AFC, the ability of the Seller or AFC to perform its obligations under this Agreement, the Related Documents to which it is a party, or the other documents delivered or to be delivered by it hereunder or the collectability of the Pool Receivables, or which affects the legality, validity, or enforceability of this Agreement, the Related Documents to
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which it is a party, or the other documents delivered or to be delivered by it hereunder; and

- (r) the Seller is not: (i) a country, territory, organization, person or entity named on an Office of Foreign Asset Control (OFAC) list; (ii) a Person that resides or has a place of business in a country or territory named on such lists or which is designated as a “Non-Cooperative Jurisdiction” by the Financial Action Task Force on Money Laundering, or whose subscription funds are transferred from or through such a jurisdiction; (iii) a “Foreign Shell Bank” within the meaning of the USA PATRIOT Act, i.e., a foreign bank that does not have a physical presence in any country and that is not affiliated with a bank that has a physical presence and an acceptable level of regulation and supervision; or (iv) a person or entity that resides in or is organized under the laws of a jurisdiction designated by the United States Secretary of the Treasury under Sections 311 or 312 of the USA PATRIOT Act as warranting special measures due to money laundering concerns.

#### **4.2 Survival**

Subject to Section 10.12, the representations, warranties and covenants of the Seller (in its capacity as Servicer) contained in this Agreement shall survive the consummation of the transactions contemplated by this Agreement.

#### **4.3 Representations and Warranties of the Trust**

The Trust represents and warrants to the Seller, and acknowledges that the Seller is relying upon such representations and warranties in consummating the transactions contemplated hereby, that:

- (a) the Trust is validly existing under the laws of the Province of Ontario;
  - (b) the execution, delivery and performance by it of this Agreement and the other documents to be delivered by it hereunder (i) are within its powers and (ii) do not contravene: (A) the documents pursuant to which it was established, (B) in any material respect, any law, rule or regulation applicable to it, (C) any material contractual restriction binding on or affecting it or its property, or (D) any material order, writ, judgement, award, injunction or decree binding on or affecting it or its property;
  - (c) no authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body is required for the due execution, delivery and performance by it of this Agreement or any other document to be delivered by it hereunder other than those which have been obtained or completed;
  - (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms subject to (a) applicable bankruptcy, reorganization, winding-up, insolvency, moratorium and other laws of general application limiting the enforcement of creditors’ rights; (b) the fact that the granting of equitable remedies such as specific performance and injunction is within the discretion of a court of competent jurisdiction; and (c) general principles of equity;
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- (e) there is no pending or, to its knowledge, threatened, action or proceeding affecting it or any of its assets before any court, governmental agency or arbitrator which would, if determined adversely, have a material adverse effect on the Seller's rights or interests hereunder; and
- (f) it is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada).

#### **4.4 Survival**

Subject to Section 10.12, the representations and warranties of the Trust contained in this Agreement shall survive the consummation of the transactions contemplated by this Agreement.

### **ARTICLE 5 ADMINISTRATION**

#### **5.1 Designation of the Servicer**

The Trust hereby designates the Seller as the initial Servicer under this Agreement and by executing and delivering this Agreement, the Seller agrees to accept its designation as the Servicer until a Servicer Transfer, and hereby agrees to perform the duties and obligations of the Servicer pursuant to the terms hereof, at no cost to the Trust. Subject to the provisions of this Agreement, the Servicer shall administer, service and collect the Pool Assets as agent for the Trust until the Final Termination Date and the Trust shall not terminate the Seller as Servicer except in accordance with Section 5.12. The Servicer may, in accordance with the terms of the Credit and Collection Policies, subcontract with any Person for the administration and collection of the Pool Receivables; provided however, that the Servicer shall remain liable for the performance of the duties and obligations so subcontracted and all other duties and obligations of the Servicer pursuant to the terms hereof.

#### **5.2 Standard of Care**

The Servicer, as agent for the Trust (to the extent provided herein), shall perform its duties hereunder with reasonable care and diligence, using that degree of skill and attention that the Servicer exercises in managing, servicing, administering, collecting on and performing similar functions relating to comparable Receivables that it services for itself or other Persons.

#### **5.3 Authorization of Servicer**

Without limiting the generality of the authority granted by the designation of any Person as Servicer, and subject to the other provisions of this Agreement, the Servicer is hereby authorized and empowered by the Trust to take any and all reasonable steps in its name and on its behalf necessary or desirable, and not inconsistent with the sale, transfer and assignment of an undivided co-ownership interest in the Pool Assets to the Trust, except that the Servicer shall not be required to notify any Person of the Trust's interest therein until the occurrence of a Trigger Event (other than a Trigger Event pursuant to Section 6.1(ee)), in the reasonable determination of the Servicer, to collect all amounts due under any and all Pool Assets, including, to execute and deliver, on behalf of the Trust and its successors and assigns, any and all instruments of satisfaction or

cancellation, or partial or full release or discharge, and all other comparable instruments, with respect to the Pool Assets and, after delinquency of any Pool Receivable, and to the extent permitted under and in compliance with applicable law and regulations, to commence proceedings with respect to enforcing payment of such Pool Receivable and the Related Security, and adjusting, settling or compromising the account or payment thereof, to the same extent as the Seller could have done if it had continued to own the Pool Assets. The Trust shall furnish the Servicer with any powers of attorney and other documents that are within the ability of the Trust to furnish and which are reasonably necessary or appropriate to enable the Servicer to carry out its servicing and administrative duties hereunder as agent of the Trust.

#### **5.4 Enforcement of Contracts**

The Servicer is authorized to enforce and protect the Trust's rights and interests in, to and under the Pool Assets and the Trust's right to receive payment in respect thereof, and the Servicer may commence or defend proceedings in the name of the Trust (or any agent thereof, including the Servicer) for the purpose of enforcing or protecting any rights under any of the Pool Assets or against any Obligor personally. Unless the Trust shall have given its express prior written consent thereto, the Servicer shall not take any action that would make the Trust a party to any litigation. Notwithstanding the foregoing, the Servicer need not seek the Trust's consent to make the Trust a party to litigation incidental to the enforcement by the Servicer of any of the Pool Assets.

#### **5.5 Assignment for Purpose of Enforcement**

If the Servicer shall commence a legal proceeding to enforce any rights under any of the Pool Assets or against an Obligor personally in accordance with this Agreement, the Trust shall thereupon be deemed to have automatically assigned its interest in any affected Pool Asset to the Servicer as of the day prior to such commencement, solely for the purpose of and only to the extent necessarily incidental to the enforcement by the Servicer of such rights. The Servicer shall hold any such assigned interest in a Pool Asset in trust for the Trust and the same shall be deemed to have been automatically re-assigned to the Trust when the assignment to the Servicer ceases to be necessary for the enforcement by the Servicer of such rights. If in any enforcement suit or legal proceeding it shall be held that the Servicer may not enforce a right under a Pool Asset on the grounds that it shall not be a real party in interest or a holder entitled to enforce rights in respect of the Pool Asset, the Trust shall, at the Servicer's expense and direction, take such steps as are necessary to enforce the Pool Asset.

#### **5.6 Deposit of Collections**

The Servicer shall deposit, or cause to be deposited, all Collections, to the Deposit Accounts as soon as reasonably possible and in any event, within one Business Day of receipt. All Collections deposited to the Deposit Accounts shall be held for the benefit of the Trust and the Seller, shall only be invested in Eligible Investments and shall be withdrawn from the Deposit Accounts only in accordance with the terms of this Agreement. Notwithstanding the foregoing, the Servicer shall be entitled to reimburse itself out of Collections for any amounts paid by it to [\*\*] pursuant to Section 8 of the Blocked Account Agreement in respect of chargebacks relating to cheques, drafts and other payment items dishonoured or otherwise returned for insufficient funds. Each of the parties hereto agrees that, until consented to in writing by the Trust, the Agents and the Financial

Services Agent, only obligations described in clause (a) of the definition of Eligible Investments shall constitute Eligible Investments.

## **5.7 Description of Services**

The Servicer shall, unless the Financial Services Agent directs otherwise, take or cause to be taken all such reasonable actions as may be necessary or advisable from time to time to administer and service each Pool Receivable and the Related Security and the related Collections in accordance with the provisions of the Credit and Collection Policies, this Agreement and applicable law. Without limiting the generality of the foregoing, the Servicer shall, in accordance with and subject to the Credit and Collection Policies, with respect to each Pool Receivable:

- (a) take or cause to be taken all such actions as may be necessary or desirable from time to time to collect the Pool Receivable in accordance with the terms and provisions of the applicable Contract and in accordance with the terms of this Agreement;
  - (b) keep an individual record with respect to the Pool Receivable and post to it all payments received under or in respect of such Pool Receivable;
  - (c) deposit all Collections in respect of the Pool Receivable to the Deposit Accounts as required by Section 5.6, regardless of any defence, set-off right or counterclaim;
  - (d) give timely notice to the Obligor of the Pool Receivable of any payment or other default thereunder within the Servicer's knowledge;
  - (e) record the Pool Receivable as being delinquent or defaulted in accordance with the Credit and Collection Policies;
  - (f) investigate all delinquencies and defaults under the Pool Receivable;
  - (g) respond to all reasonable enquiries of the Obligor of the Pool Receivable or other obligors under the Related Security;
  - (h) take such steps as are reasonably necessary or appropriate to maintain the perfection and priority, as the case may be, of the Security Interests, if any, created pursuant to the Pool Receivable and the Related Security and, subject to Sections 5.7(m) and (n) to refrain from releasing or subordinating any such Security Interest in whole or in part except to the extent that the Servicer would have done so in a similar situation with respect to other Receivables administered by it on its own behalf;
  - (i) make all payments to Governmental Authorities and others where a statutory lien or deemed trust having priority over the Trust's interest in any of the Pool Assets has arisen (provided that nothing herein shall preclude the Servicer from contesting any claim in the ordinary course of business and in good faith);
  - (j) subject to Sections 5.3 and 5.4, determine the advisability of taking action and instituting and carrying out legal proceedings with respect to the Pool Receivable
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and the Related Security in case of default by the Obligor under such Pool Receivable and take such action and institute and carry out such legal proceedings determined by it to be advisable;

- (k) maintain Records with respect to the Pool Receivable and the Related Security and, subject to Section 10.8, grant representatives of the Trust, the Agents and the Financial Services Agent, upon not less than five Business Days' prior notice, reasonable access to examine and make copies of such Records and a reasonable opportunity to discuss matters relating to the administration and servicing of the Pool Receivable and the Related Security with personnel of the Servicer involved in such administration and servicing during business hours, including the opportunity to see and review information systems and software in operation;
- (l) hold as trust property for and on behalf of the Trust and the Seller, free and clear, as against creditors of the Seller, of all Security Interests and rights of others other than Government and Employee Claims, Operation of Law Claims and those created pursuant to this Agreement and the Related Documents, all Records with respect to the Pool Receivable at any one or more of the offices identified in Schedule "B" until the Final Termination Date;
- (m) execute and deliver all such assignments, releases and discharges of the Pool Receivable and the Related Security as are required by the terms thereof and upon receipt of all amounts due thereunder or as necessary to allow the Servicer to liquidate and sell a Financed Vehicle in accordance with the Credit and Collection Policies;
- (n) settle, compromise and otherwise deal with any claims under the Pool Receivable or the Related Security if necessary, advisable or otherwise permitted in accordance with the terms of the related Contract, this Agreement and the Credit and Collection Policies; and
- (o) maintain a complete list of Excluded Receivables and shall update such list on a timely basis for all changes thereto.

#### **5.8 Affirmative Covenants of the Servicer**

From the date hereof until the Final Termination Date, the Servicer covenants and agrees that it will, unless the Trust and the Financial Services Agent shall otherwise consent in writing:

- (a) comply in all respects with all applicable laws, rules, regulations and orders with respect to it, its business and properties, all Pool Assets and the performance of its obligations as Servicer, such compliance to include paying before the same become delinquent all Taxes and Security Interests imposed upon the Servicer or its property in accordance with its normal policies with respect thereto, except to the extent the same are contested in good faith and by appropriate proceedings or where failure to do so could not reasonably be expected to have a Material Adverse Effect;
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- (b) preserve and maintain its corporate existence, rights, franchises and privileges in the jurisdiction of its incorporation, and qualify and remain qualified as an extra- provincial corporation or other out-of-jurisdiction corporation in each jurisdiction where the failure to preserve and maintain such existence, rights, franchises, privileges and qualifications could reasonably be expected to have a Material Adverse Effect;
  - (c) hold as trust property for and on behalf of the Trust and the Seller, at any one or more of the offices designated under the heading "Location of Records" in Schedule "B" (provided that, as may be necessary, originals may be delivered to any law firm acting on behalf of the Servicer in connection with any claims or proceedings connected with a Pool Asset) with respect to each Pool Receivable, until the obligations in respect of such Pool Receivable have been satisfied, the following documents or instruments, which are hereby constructively delivered to the Trust:
    - (i) the original Contracts applicable to the Pool Receivables;
    - (ii) the original credit application, credit analysis and credit agency report (unless no such report could be obtained in respect of the Obligor) and "credit bureau score" and "custom score" records, if any, relating to the Obligor, all in accordance with the Credit and Collection Policies;
    - (iii) all other documents that the Servicer shall keep on file, in accordance with its customary procedures, evidencing the Related Security; and
    - (iv) any and all other documents that the Servicer shall keep on file, in accordance with its customary procedures, relating to a Receivable, an Obligor or any Financed Vehicles;
  - (d) comply with the Credit and Collections Policies in regard to the Pool Assets and otherwise, as applicable, in performing its covenants hereunder, except to the extent that non-compliance therewith would not materially adversely affect the Trust's interest in any Pool Assets with respect thereto or the collectability or enforceability thereof, it being agreed for the purposes of this Agreement that the invalidity or loss of priority of any material Security Interest in any Financed Vehicle comprising part of the Related Security related to any Pool Receivable would materially adversely affect the Trust's interest therein;
  - (e) at its own expense, employ and provide general administrative, supervisory and accounting staff and general overhead as may from time to time be reasonably required to carry out its obligations hereunder and cause its employees to perform their responsibilities in collecting and administering the Pool Assets in the same manner as if the Pool Assets were owned by the Seller, except (i) to the extent necessary or desirable to accommodate the exercise by the Trust, the Agents or the Financial Services of their respective rights under this Agreement and the Related Documents, or (ii) as otherwise required hereby;
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- (f) pay from its own funds all general administrative and out-of-pocket expenses and other costs incurred by it in carrying out its obligations hereunder and all fees and expenses of any administrator appointed or subcontractor retained by it;
  - (g) cause the computer records of the Seller which contain particulars of the Pool Assets to contain notations, marks or other designations sufficient to identify that an interest in the Pool Assets has been sold by the Seller to the Trust hereunder;
  - (h) maintain and implement administrative and operating procedures (including an ability to recreate Records in the event of the destruction of the originals of such Records) to keep and maintain, and keep and maintain all Records and other information reasonably necessary or advisable to enable the Servicer to produce the information required to be produced by it pursuant hereto or reasonably necessary or advisable for the enforcement of all of the Pool Receivables and Related Security (including Records adequate to permit the daily identification of all Collections under and adjustments to each Pool Receivable);
  - (i) at any time and from time to time during regular business hours, upon not less than five Business Days' prior notice, subject to Section 10.8, (A) assemble such of the Records or copies thereof as may reasonably be requested by the Agents or the Financial Services Agent and make same available to the Agents and the Financial Services Agent at the principal place of business of the Servicer and, if the Records cannot be provided solely at such office, at such other offices of the Servicer or its Affiliates where Records are kept, and permit the Agents and the Financial Services Agent and their respective agents or representatives, to examine and make copies, as reasonably required, of such Records and (B) permit the Agents and the Financial Services Agent and their respective agents to visit the offices and properties of the Seller for the purpose of discussing matters relating to the Pool Assets and the Servicer's performance hereunder with any of the Servicer's officers or employees having knowledge of such matters, provided that each of the Agents and the Financial Services Agent shall act reasonably to minimize any disruption to the Servicer in connection therewith; provided that prior to the occurrence of a Cash Reserve Event or a Trigger Event, the Agents and the Financial Services Agent shall not be reimbursed for more than two such examinations in any year in the aggregate, if a Cash Reserve Event has occurred and is continuing, the Agents and the Financial Services Agent shall not be reimbursed for more than four such examinations in any year in the aggregate and, if a Trigger Event has occurred and is continuing, the Agents and the Financial Services Agent shall be reimbursed for all such examinations;
  - (j) to the extent the Records consist in whole or in part of computer programs which are licensed by the Servicer, the Servicer will, forthwith upon the occurrence of the first Servicer Termination Event, use its best efforts to arrange for the licence or sublicense of such programs to the Financial Services Agent for the limited purpose of permitting the Financial Services Agent or any Replacement Servicer to administer and collect the Pool Assets and to enforce the rights acquired by the Trust in respect of the Related Security;
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- (k) at its expense, timely and fully perform and comply in all material respects with all material provisions, covenants and other promises required to be observed by the Seller under the Contracts in connection with the Pool Assets;
  - (l) permit the Agents and the Financial Services Agent at any reasonable time and from time to time, upon not less than five Business Days' prior notice, to inspect the data processing systems used by the Servicer to service, administer and collect the Pool Receivables and the Related Security and, in the event that the Seller is not the Servicer, to permit the Servicer to use, through the Seller only (and not directly), any computer or computer related equipment, together with all necessary software, that had been used by the Seller to service, administer and collect the Pool Receivables and the Related Security immediately prior to the Seller ceasing to be the Servicer, provided that each of the Agents and the Financial Services Agent shall act reasonably to minimize any disruption to the Servicer in connection therewith;
  - (m) give the Trust and the Financial Services Agent not less than 30 days' prior written notice of any change in the address of its chief place of business and chief executive office, and written notice promptly after any change in the address of an office listed under the heading "Location of Records" in Schedule "B", and each such notice shall be deemed to amend Schedule "B" accordingly;
  - (n) provide to the Trust and the Financial Services Agent not less than 30 days' prior notice of any change in the name of the Servicer as stated in its constating documents;
  - (o) co-operate with, and offer such assistance as may reasonably be requested by, the chartered accountants selected by the Financial Services Agent to furnish reports in respect of the Trust, the Purchase, any Increases and the servicing of the Pool Assets under this Agreement;
  - (p) upon request of the Financial Services Agent and with the Servicer's written consent, such consent not to be unreasonably withheld, request the Servicer's auditors to assist the auditors of the Trust and Lenders to the extent and in such manner as is reasonably required for such auditors to report on the status of the Pool Assets under this Agreement;
  - (q) make or cause to be made all filings, recordings, registrations and take all other actions in each jurisdiction necessary to validate, preserve, perfect or protect the co-ownership interests of the Trust in the Pool Assets including, the right to enforce the Related Security; and
  - (r) following the occurrence and during the continuation of a Servicer Termination Event or a Cash Reserve Event, the Servicer shall provide to the Backup Servicer and each of the Trust and the Financial Services Agent (if requested) on a daily basis an electronic download with respect to the Pool Receivables in form and substance acceptable to the Backup Servicer (and which shall include, but not be
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limited to, all Records related to each Receivable required by the Backup Servicer to service and collect such Receivable) and a Portfolio Certificate (including information with respect to all Collections received and all Receivables acquired by the Seller). Following the occurrence and during the continuation of a Cash Reserve Event, the Financial Services Agent shall have the right to require the Seller or the Servicer to, and upon such request the Seller or the Servicer, as applicable, shall, assemble copies of all of the Contracts and make the same available to the Backup Servicer or other third-party custodian specified by, and at a place selected by, the Financial Services Agent within 30 days.

## **5.9 Reporting Requirements of the Servicer**

From the date hereof until the Final Termination Date, the Servicer covenants and agrees that it will, unless the Trust and the Financial Services Agent shall otherwise consent in writing, deliver to the Trust, the Agents and the Financial Services Agent:

- (a) on each Reporting Date, a Servicer Report relating to the Pool Assets during the related Collection Period and relating to all transactions between the Seller in its capacity as Servicer and the Trust during such Collection Period, such report to be current as of the close of business of the Servicer on the related Settlement Date;
  - (b) on the first Business Day of each week, a Portfolio Certificate relating to the Pool Assets as of the close of business of the Servicer on the last day of the prior week;
  - (c) on each Business Day following the occurrence and during the continuation of an Enhancement Build Trigger or a Trigger Event, a Portfolio Certificate relating to the Pool Assets as of the close of business of the Servicer on the Business Day immediately preceding such Business Day;
  - (d) upon the reasonable request therefor by the Trust or the Financial Services Agent, a listing by Obligor of all Pool Receivables and current aging report for all Delinquent Receivables;
  - (e) forthwith after the occurrence of each Servicer Termination Event and each event or the existence of any fact which, with the giving of such notice or lapse of time or both, may constitute a Servicer Termination Event, a statement of a senior financial officer or accounting officer of the Servicer setting forth details as to such Servicer Termination Event or fact or event and the action which the Servicer has taken and is proposing to take with respect thereto; and
  - (f) promptly, from time to time, such other documents, records, information or reports with respect to the Pool Assets or the conditions or operations, financial or otherwise, of the Servicer as the Trust or the Financial Services Agent may from time to time reasonably request.
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### **5.10 Negative Covenants of the Servicer**

From the date of this Agreement until the Final Termination Date, the Servicer covenants and agrees that it will not, unless the Trust and the Financial Services Agent shall otherwise consent in writing:

- (a) except as otherwise provided herein, whether by operation of law or otherwise, purport to sell, assign or otherwise dispose of, or create or suffer to exist any Security Interest upon or with respect to the Seller's or the Trust's interest in the Pool Assets if the effect of such Security Interest would be to cause the related Pool Receivable not to be an Eligible Receivable, or assign any right to receive payment under, or to enforce the Servicer's interest in, any of the Pool Assets, provided that the Servicer may enter into arrangements with collection agencies, private investigation firms and law firms to directly collect and hold payments of Receivables in trust for the benefit of the Trust and the Seller in accordance with the Credit and Collection Policies;
  - (b) without the prior written consent of the Trust and the Financial Services Agent, make any change in the Credit and Collection Policies which could reasonably be expected to have a Material Adverse Effect, or make any change to its credit, collection and administration practices and procedures with respect to Pool Receivables or Receivables which are to become Pool Receivables, provided that prior written consent shall not be required for changes to standard operating procedures (excluding any changes to credit underwriting criteria), however, any of the Trust and the Financial Services Agent can prevent a change, or require that a change be reversed, by notifying the Servicer that such Person reasonably believes such a change would have a material adverse impact on the Pool Receivables;
  - (c) after the occurrence and during the continuance of a Trigger Event, extend the maturity or adjust the Principal Balance or otherwise modify the terms of any Pool Receivable in any material respect, or amend, modify or waive any term or condition of any related Contract in any material respect;
  - (d) release any security, guarantee or insurance securing any indebtedness under any of the Pool Receivables, except to the extent that granting such release is in accordance with this Agreement, the Credit and Collection Policies and the Servicer's usual practices as an obligee or such security or insurance is replaced in a form acceptable to the Trust and the Financial Services Agent acting reasonably;
  - (e) take any action that adversely affects the perfection, validity or protection of the Trust's rights to collect amounts owing in respect of the Pool Receivables and the proceeds thereof, including the right to enforce the Related Security, except to the extent that the Servicer would have done so in a similar situation with respect to other similar receivables administered by it on its own behalf;
  - (f) enter into any transaction of reorganization, amalgamation or arrangement, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution) or sell,
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lease or otherwise dispose of its assets as an entirety or substantially as an entirety; except that the Servicer may enter into a transaction of reorganization, amalgamation, or arrangement, so long as (i) such transaction could not reasonably be expected to have a Material Adverse Effect, (ii) as a condition to the completion of such transaction, the continued or reorganized corporation shall have executed an agreement of assumption to perform every obligation of the Servicer hereunder and under the other agreements, instruments and documents executed and delivered by the Servicer hereunder or otherwise contemplated hereby, (iii) the Backup Servicer shall have provided its written consent and acknowledged its continuing obligations under the Backup Servicer Agreement in respect of the obligations of such continued or reorganized corporation, and (iv) the Performance Guarantor shall have provided its written consent and acknowledged its continuing obligations under this Agreement in respect of the obligations of such continued or reorganized corporation; or

- (g) resign as Servicer (provided, for greater certainty, that nothing herein contained shall limit the ability of the Required Agents and the Financial Services Agent to appoint a Replacement Servicer in accordance with the provisions of this Agreement).

### **5.11 Servicer Termination Events**

The occurrence or existence of one or more of the following events or facts which is continuing and has not been remedied by the Servicer or the Backup Servicer within the time period specified if any, with respect to such events or facts shall constitute a “**Servicer Termination Event**”:

- (a) the Servicer fails to make any payment or deposit to be made by it hereunder and such failure continues for two Business Days after the occurrence of such failure;
  - (b) any failure on the part of the Servicer to duly perform or observe any material term, condition, covenant or agreement of the Servicer set forth in this Agreement (other than Section 5.10(f)), in any Related Document to which it is a party, or any document executed in connection herewith, other than such as are specifically referred to in paragraph (a) above, which failure continues unremedied for a period of 30 days after the date on which the Servicer receives written notice thereof from the Trust or the Financial Services Agent specifying the default or breach;
  - (c) any representation or warranty made by the Servicer (or any of its officers) in or pursuant to this Agreement, any Related Document to which it is a party, the Purchase Request, any Increase Request, any Servicer Report, any Portfolio Certificate or any document executed in connection herewith or therewith proves to have been false or incorrect in any material respect when made and has not been cured within 30 days after written notice thereof has been received by the Servicer from the Trust or the Financial Services Agent;
  - (d) the taking of possession by an encumbrancer (including a receiver, receiver manager or trustee) of any assets of the Servicer (other than solely to perfect a
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security interest therein), or the levying or enforcement of a distress or execution or any similar process against any part of the assets of the Servicer that remains unsatisfied for 30 days after the Servicer becoming aware thereof, which materially adversely affects the Servicer's ability to perform its obligations hereunder;

- (e) the issuance or levying of a writ of execution, attachment or similar process against all or a substantial portion of the property of the Servicer, the Backup Servicer or the Performance Guarantor, in connection with any judgment against the Servicer, the Backup Servicer or the Performance Guarantor in any amount that materially affects the property of the Servicer, the Backup Servicer or the Performance Guarantor if such writ of execution, attachment or similar process shall not have been stayed or dismissed after 45 days;
- (f) any failure on the part of the Servicer to duly perform or observe the terms of Section 5.10(f);
- (g) any of the Servicer, AFC or the Performance Guarantor shall generally not pay its debts as they become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceedings shall be instituted by or against the Servicer or the Performance Guarantor seeking to adjudicate it bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking the entry of an order for relief by the appointment of a receiver, trustee or other similar official for it or for any substantial part of its property and, if such proceeding has been instituted against the Servicer or the Performance Guarantor, as the case may be, either such proceeding has not been stayed or dismissed within 45 days or any of the actions sought in such proceeding (including the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official) are granted, or the Servicer or the Performance Guarantor take any corporate action to authorize any of the actions described in this Section 5.11(g); and
- (h) the filing by the Servicer, AFC or the Performance Guarantor of a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act*, the *Companies' Creditors Arrangement Act* or any other similar legislation in the applicable jurisdiction, to some or all of its creditors.

## **5.12 Effecting a Servicer Transfer**

At any time after the occurrence of a Servicer Termination Event that has not been subsequently waived in writing by the Trust and the Financial Services Agent, the Financial Services Agent may effect a termination of a Servicer's designation as Servicer hereunder (a "**Servicer Transfer**") by giving notice to the Servicer of its decision to terminate the Servicer's engagement as Servicer, which termination shall take effect at the time specified in such notice, or, failing the specification of any time, upon the appointment of a Replacement Servicer. Any waiver delivered by the Trust and the Financial Services Agent will only be effective with respect to the specific matters in

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respect of which it is given and shall not be applicable to any further event or occurrence. Each of the Trust, the Agents and the Financial Services Agent acknowledges that any written waiver it delivers will be irrevocable.

**5.13 Appointment of Replacement Servicer**

At any time after the occurrence of a Servicer Termination Event, the Financial Services Agent may by instrument in writing delivered to the Servicer designate and appoint as the Replacement Servicer any Person;

**5.14 Additional Servicer Covenants Following a Servicer Transfer**

From and after a Servicer Transfer until the Final Termination Date, the Servicer and the Seller covenant and agree that they shall, in addition to any other obligations, upon the request of the Financial Services Agent:

- (a) instruct the Obligor of each Pool Receivable (and any other Persons, if applicable, in the case of the Related Security) to remit all payments due under the Pool Receivables and Related Security to the Replacement Servicer;
  - (b) remit to the Replacement Servicer all payments, if any, received by the predecessor Servicer from Obligors and from other Persons, if applicable, under the Pool Assets;
  - (c) segregate all cash, cheques and other instruments constituting Collections in a manner acceptable to the Trust and, immediately upon receipt, deposit all such cash, cheques and instruments, duly endorsed or with duly executed instruments of transfer, to an account specified by the Replacement Servicer;
  - (d) cause the computer records of the Seller which contain particulars of the Pool Assets to contain notations, marks or other designations sufficient to identify that an interest in the Pool Assets has been sold by the Seller to the Trust hereunder;
  - (e) deliver copies or originals of all Records (including computer diskettes or tapes containing all information necessary or reasonably desirable to enable the Financial Services Agent or its agent to collect the amounts owing under the Pool Receivables and the Related Security, together with a printed copy or microfiche of all such information) to the Trust or as it may direct in writing (or retain the same in segregated storage if so directed), and provide the Financial Services Agent or its agent with all reasonable assistance necessary to decipher the information contained on the computer diskettes or tapes; and
  - (f) perform any and all acts and execute and deliver any and all documents as may reasonably be requested by the Financial Services Agent in order to effect the purposes of this Agreement or to enable the Replacement Servicer to collect and enforce the Pool Receivables and any Related Security and Collections related thereto.
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**5.15 Financial Services Agent Rights Following a Servicer Transfer**

Upon a Servicer Transfer, the Financial Services Agent may, but is not required to, at any time (unless prior to such time the Seller shall have purchased from the Trust and satisfied all of its obligations with respect to such purchase, all of the Pool Receivables), directly or through the Replacement Servicer, without limitation:

- (a) perform the services, duties and functions of the Servicer specified in Article 5 of this Agreement with respect to the Pool Assets as the Financial Services Agent reasonably deems fit;
- (b) notify any Obligor of the purchase by the Trust and the sale, transfer and assignment by the Seller of any Pool Assets under this Agreement;
- (c) contact any Obligor for any reasonable purpose, including for the performance of audits and verification analyses, and the determination of account balances and other data maintained by the predecessor Servicer;
- (d) direct any Obligor to make all payments on account of any Pool Receivables or Related Security directly to the Financial Services Agent at an address designated by the Financial Services Agent or to such third party (including the Replacement Servicer) or bank or depository as may be designated by the Financial Services Agent;
- (e) request any Obligor to change the instructions for any direct debit or electronic funds transfer otherwise payable to the Seller or the Servicer; and
- (f) proceed directly against any Obligor and take any and all other actions, in the Seller's name or otherwise, necessary or reasonably desirable to collect the Pool Receivables, enforce the Related Security or effect any related result.

**5.16 Power of Attorney; Further Assurances**

- (a) The Seller hereby grants to the Financial Services Agent an irrevocable power of attorney, with full power of substitution, coupled with an interest, to take in the name of the Seller or in the name of the Financial Services Agent, acting reasonably, all steps necessary or advisable to endorse or negotiate an instrument, bill of exchange or other writing or to otherwise enforce or realize on any Pool Asset or other right of any kind held or owned by the Seller or transmitted to or received by the Seller, the Trust or the Financial Services Agent as payment on account or otherwise in respect of the Pool Asset, and to execute and deliver, in the Seller's name and on the Seller's behalf, such instruments and documents necessary or desirable to evidence or protect the ownership of the Trust in the Pool Assets and to execute and file, in the Seller's name and on the Seller's behalf, such recording, registration, financing or similar statements (including any amendments, renewals and continuation statements) under applicable laws, including the PPSA, in such jurisdictions where it may be necessary to validate, perfect or protect the ownership of the Trust as aforesaid. The Seller shall execute and deliver such additional
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documents and shall take such further actions as the Financial Services Agent may reasonably request to effect or evidence the sale, assignment and transfer of the Pool Assets, and the Trust's ownership interest therein or otherwise necessary or desirable in furtherance of the foregoing. The Seller shall execute and deliver to the Financial Services Agent such powers of attorney as may be necessary or appropriate to enable the Financial Services Agent to endorse for payment any cheque, draft or other instrument delivered to the Trust or the Financial Services Agent in payment of any amount under or in respect of a Pool Asset.

- (b) The Financial Services Agent hereby covenants and agrees that it will not exercise any of the rights conferred by Section 5.16(a) except upon the occurrence of a Trigger Event and then only in respect of the Pool Assets.

#### **5.17 Deemed Collections**

- (a) If, on any day prior to the Final Termination Date, any Pool Receivable is either (i) reduced or cancelled as a result of any breach by the Seller or the Servicer of its obligations hereunder or of the terms of the related Contract; or (ii) reduced or cancelled as a result of a set-off in respect of any claim by the applicable Obligor against the Seller or the Servicer (whether such claim arises out of the same or a related transaction or an unrelated transaction or the loss of or interference with the right of the Obligor to quiet enjoyment of, and continued possession of, the Financed Vehicle), the Servicer or the Seller and the Servicer (on a joint and several basis), so long as the Servicer is the Seller or an Affiliate thereof, as the case may be shall, for all purposes hereof, be irrebuttably deemed to have received a Collection of such Receivable in the amount of such reduction or cancellation and shall deposit such amount to the Deposit Accounts in accordance with the terms of Section 5.6.
  - (b) If on any day prior to the Final Termination Date any Security Interest, other than a Blocked Account Claim, is validly asserted by any Person (other than the Trust or the Financial Services Agent) against any Pool Receivable (as determined by a court of competent jurisdiction or due to the agreement or acquiescence of the Seller or Servicer), and such Security Interest has arisen by or through the action or inaction of the Seller or the Servicer, and, with respect to any Security Interest granted by or arising through an Obligor and asserted against a Financed Vehicle, such Security Interest ranks in priority to or *pari-passu* with the interest of the Trust or the Financial Services Agent, as applicable, the Seller shall, for all purposes hereof, be irrebuttably deemed to have received on such day, a Collection of any affected Pool Receivable in full and shall deposit such amounts to the Deposit Accounts in accordance with the terms of Section 5.6.
  - (c) If on any day prior to the Final Termination Date it is discovered or determined (i) that any Pool Receivable included as an Eligible Receivable in the calculation of the Net Receivables Pool Balance was not an Eligible Receivable on the date of such calculation, or (ii) the Servicer, so long as the Servicer is the Seller or an Affiliate thereof, has extended, amended or otherwise modified a Contract in
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contravention of Section 5.10(c), the Seller shall be deemed to have received on such day a Collection of such Pool Receivable in full.

- (d) If the Seller or Servicer has been deemed, pursuant to Section 5.17(a), (b) or (c) to have received a Collection of any Pool Receivable in full, upon deposit by the Seller or Servicer to the Collection Account of the amount thereof, the Trust will be deemed to have sold to the Seller or Servicer, as the case may be, without further instrument or formality, the related Pool Receivables together with the Related Security in respect thereof free and clear of all Security Interests arising through the Trust and the Financial Services Agent but otherwise on an “as is, where is” basis without recourse to, or representation or warranty of the Trust.

## **ARTICLE 6 TRIGGER EVENTS**

### **6.1 Meaning of Trigger Event**

The term “Trigger Event” means any of the following events or circumstances:

- (a) the Seller or the Servicer fails to make any payment or deposit to be made by it hereunder and such failure continues for two Business Days after the occurrence of such failure;
  - (b) any failure on the part of the Seller to duly perform or observe any material term, condition, covenant or agreement of the Seller set forth in this Agreement (other than Section 7.3(c)) or any document executed in connection herewith, other than such as are specifically referred to in paragraph (a) above, which failure continues unremedied for a period of 30 days after the date on which the Seller receives written notice thereof from the Trust or the Financial Services Agent specifying the default or breach;
  - (c) a Servicer Termination Event occurs;
  - (d) any representation or warranty made by the Seller (or any of its officers) in or pursuant to this Agreement, the Related Documents to which it is a party, the Purchase Request, any Increase Request, any Servicer Report, any Portfolio Certificate or any document executed in connection herewith or therewith proves to have been false or incorrect in any material respect when made and has not been cured within 30 days after written notice thereof has been received by the Seller from the Trust or the Financial Services Agent;
  - (e) the taking or possession by an encumbrancer (including a receiver, receiver manager or trustee) of any assets of the Seller (other than solely to perfect a security interest therein) or the levying or enforcement or a distress or execution or any similar process against any of the assets of the Seller that remains unsatisfied for 30 days after the Seller becoming aware thereof, which materially adversely affects the Seller’s ability to perform its obligations hereunder or under any Related Document to which it is a party;
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- (f) the issuance or levying of a writ of execution, attachment or similar process against all or a substantial portion of the property of the Seller, in connection with any judgment against the Seller in any amount that materially affects the property of the Seller if such writ of execution, attachment or similar process shall not have been stayed or dismissed after 45 days;
  - (g) any failure on the part of the Seller to duly perform or observe the terms of Section 7.3(c);
  - (h) the filing by the Seller of a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act*, the *Companies' Creditors Arrangement Act* or any other similar legislation in the applicable jurisdiction, to some or all of its creditors;
  - (i) the Seller shall generally not pay its debts as they become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceedings shall be instituted by or against the Seller seeking to adjudicate it bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking the entry of an order for relief by the appointment of a receiver, trustee or other similar official for it or for any substantial part of its property and, if such proceeding has been instituted against the Seller either such proceeding has not been stayed or dismissed within 45 days or any of the actions sought in such proceeding (including the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official) are granted, or the Seller take any corporate action to authorize any of the actions described in this Section 6.1(i);
  - (j) the Seller shall fail to transfer to any Replacement Servicer when required any rights, pursuant to the Agreement, which the Seller then has with respect to the servicing of the Pool Receivables;
  - (k) (i) a default shall occur in the payment when due (subject to any applicable grace period), whether by acceleration or otherwise, of any Indebtedness of the Seller, AFC or the Performance Guarantor or (ii) a default shall occur in the performance or observance of any obligation or condition with respect to such Indebtedness if the effect of such default is to accelerate the maturity of any such Indebtedness, and, in the case of either clause (i) or clause (ii), the Indebtedness with respect to which non-payment and/or non-performance shall have occurred and is continuing exceeds, at any point in time, with respect to the Seller and AFC, \$1 million and with respect to the Performance Guarantor, \$35 million, in the aggregate for all such occurrences;
  - (l) this Agreement, the Purchase or any Increases shall for any reason (other than pursuant to the terms hereof) cease to create, or shall for any reason cease to be, a valid and enforceable perfected co-ownership interest in each Pool Receivable and the Collections with respect thereto;
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- (m) as of any Settlement Date, the arithmetic average of the Default Ratios for the most recent [\*\*] shall exceed [\*\*] or the Default Ratio as of any Settlement Date shall exceed [\*\*];
  - (n) as of any Settlement Date, the arithmetic average of the Delinquency Ratios for the most recent [\*\*] shall exceed [\*\*] or the Delinquency Ratio as of any Settlement Date shall exceed [\*\*];
  - (o) as of any Settlement Date, the arithmetic average of the Net Spread for the most recent [\*\*] shall be [\*\*] or less;
  - (p) the Tangible Net Worth of the Seller shall be less than [\*\*] or the Tangible Net Worth of AFC shall be less than [\*\*] (provided that if GAAP is adjusted such that leases that were previously treated as operating leases are treated as debt, the parties shall negotiate in good faith to adjust this provision to reflect a level which takes into consideration such change);
  - (q) any material adverse change shall occur in the reasonable business judgment of the Required Agents and the Financial Services Agent in the collectability of the Receivables or the business, operations, property or financial condition of the Seller or the Performance Guarantor;
  - (r) this Agreement shall cease to be in full force and effect with respect to the Performance Guarantor, the Performance Guarantor shall fail to comply with or perform any provision of this Agreement, or the Performance Guarantor (or any Person by, through or on behalf of the Performance Guarantor) shall contest in any manner the validity, binding nature or enforceability of this Agreement with respect to the Performance Guarantor;
  - (s) the sum of all of the Seller's Indebtedness, excluding [\*\*], exceeds [\*\*] (provided that if GAAP is adjusted such that leases that were previously treated as operating leases are treated as debt, the parties shall negotiate in good faith to adjust this provision to reflect a level which takes into consideration such change);
  - (t) the Seller's Indebtedness (excluding guarantees) to equity ratio is greater than [\*\*] to 1 (provided that if GAAP is adjusted such that leases that were previously treated as operating leases are treated as debt, the parties shall negotiate in good faith to adjust this provision to reflect a level which takes into consideration such change);
  - (u) the aggregate of the Principal Balances of all Eligible Receivables shall be less than \$30 million;
  - (v) a Blocked Account Agreement in favour of the Financial Services Agent in place with respect to any Deposit Account shall have terminated other than as a result of any action by the Trust (and not been replaced) or shall be of no force and effect or otherwise unenforceable;
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- (w) AFC shall not hold, directly or indirectly, 100% of the outstanding share capital of the Seller, or the Performance Guarantor shall not hold, directly or indirectly, at least 80% of all of the outstanding share capital of AFC; provided that, for greater certainty, the pledge as security by the Seller or the Performance Guarantor, as the case may be, of all or any of such shares shall not be a Trigger Event hereunder;
  - (x) the amount on deposit in the Cash Reserve Account shall at any time before the Termination Date fail to equal or exceed the Cash Reserve Required Amount for a period of [\*\*];
  - (y) any of the Seller or the Servicer shall have asserted that this Agreement or any document executed herewith to which it is a party is not valid and binding on the parties thereto; or (ii) any court, governmental authority or agency having jurisdiction over any of the parties to any of such documents or any property thereof shall find or rule that any material provisions of any of such documents is not valid and binding on the parties thereto and all appeals therefrom have been decided or the time to appeal has run;
  - (z) the Backup Servicer shall resign or be terminated and no successor Backup Servicer reasonably acceptable to the Financial Services Agent shall have been appointed pursuant to a replacement Backup Servicing Agreement, within 90 days of such resignation or termination, as applicable; unless on or prior to the first day on which a Backup Servicer is required to be appointed pursuant to this paragraph (z), the Performance Guarantor's senior unsecured debt shall be rated at least "BBB-" by Standard & Poor's and "Baa3" by Moody's; provided, that a Trigger Event shall be deemed to occur if no Backup Servicer reasonably acceptable to the Financial Services Agent shall have been appointed within 90 days following any subsequent withdrawal, suspension or downgrade of such senior unsecured debt ratings of the Performance Guarantor below "BBB-" by Standard & Poor's or below "Baa3" by Moody's or, if the applicable rating is "BBB-" by Standard & Poor's or "Baa3" by Moody's, the placement of such ratings on credit watch or similar notation;
  - (aa) the occurrence of a KAR Financial Covenant Termination Event;
  - (bb) the arithmetic average Payment Rate for [\*\*] is less than [\*\*];
  - (cc) at any time the Trust Share exceeds 100%, and such condition shall continue unremedied for five days after any date any Servicer Report or Portfolio Certificate is required to be delivered;
  - (dd) as reported on its consolidated balance sheet, AFC shall fail to maintain (as measured as of the last Business Day of each calendar week) cash and cash equivalents (including, without limitation, any intercompany receivable payable by KAR to AFC upon demand) of at least [\*\*], at least [\*\*] of which must constitute unrestricted cash (i.e., cash that is neither (i) pledged to a third party unrelated to the KAR Credit Facility, nor (ii) in an account in which a third party unrelated to the KAR Credit Facility has a perfected security interest; or
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(ee) the Termination Date shall have occurred.

## **6.2 Action Upon Occurrence of a Trigger Event**

Upon the occurrence of any Trigger Event described in Sections 6.1(a), (b), (c), (d), (g), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (aa), (bb), (cc) and (dd), the Financial Services Agent may, by written notice to the Seller and the Trust, declare the Trigger Date to have occurred on the date specified in such notice. Upon the occurrence of any other Trigger Event described in Section 6.1, the Trigger Date will occur automatically, without the necessity of any notice. Upon any such declaration or automatic occurrence, the Trust and the Financial Services Agent will have, in addition to its rights and remedies hereunder and under any documents related hereto, all other rights and remedies under applicable laws and otherwise, which rights and remedies will be cumulative. Notwithstanding the above, the Trust and the Financial Services Agent may waive any Trigger Event in their respective sole discretion and, if given, such waiver shall be irrevocable.

## **6.3 Optional Repurchase of Pool Receivables**

If, at any time the Pool Balance is less than 10% of the highest ever Pool Balance, the Servicer may elect, by notice to the Trust, the Agents and the Financial Services Agent, to purchase all of the Pool Receivables and the Related Security. The purchase by the Servicer of all of the Pool Receivables and the Related Security shall be effective upon the payment by the Servicer to the Lenders (on behalf of the Trust) of an amount equal to the sum of (i) the then outstanding Loan Amount for each Lender, (ii) the Lender Finance Charges accrued to each Lender, and (iii) any other fees, costs and expenses incurred or accrued by the Lenders, the Agents and the Financial Services Agent in connection with this Agreement to the date of or as a result of such purchase. Upon the payment of such amount by deposit to the Collection Account, the Trust shall transfer, assign and convey to the Servicer or as it may direct all of the Trust's right, title and interest in, to and under such Pool Receivables and the Related Security related thereto, without recourse, and subject only to the representations and warranties of the Trust that such right, title and interest is held beneficially by it and is transferred, assigned and conveyed to the Servicer or as it may direct free and clear of any Security Interests created, suffered or permitted to exist by the Trust and the Financial Services Agent.

# **ARTICLE 7 GENERAL COVENANTS AND POWER OF ATTORNEY**

## **7.1 Affirmative Covenants of the Seller**

From the date hereof until the Final Termination Date, the Seller covenants and agrees that it will, unless the Trust and the Financial Services Agent shall otherwise consent in writing:

- (a) comply in all respects with all applicable laws, rules, regulations and orders with respect to it, its business and properties and all Pool Assets, such compliance to include paying before the same become delinquent all Taxes and Security Interests imposed upon the Seller or its property in accordance with its normal policies with respect thereto, except to the extent the same are contested in good faith and by appropriate proceedings or where failure to do so could not reasonably be expected to have a Material Adverse Effect;

- (b) preserve and maintain its corporate existence, rights, franchises and privileges in the jurisdiction of its incorporation, and qualify and remain qualified as an extra- provincial corporation or other out-of-jurisdiction corporation in each jurisdiction where the failure to preserve and maintain such existence, rights, franchises, privileges and qualification could reasonably be expected to have a Material Adverse Effect;
  - (c) at any time and from time to time during regular business hours, upon five Business Days' prior written notice, subject to Section 10.8, (A) assemble such of the Records or copies thereof in its possession or control as may reasonably be required by the Agents or the Financial Services Agent and make same available to the Agents and the Financial Services Agent or their respective agents at the principal place of business of the Seller and, if the Records cannot be provided solely at such office, at such other offices of the Seller or its Affiliates where Records are kept, and permit the Agents and the Financial Services Agent and their respective agents or representatives, to examine and make copies, as reasonably requested, of such Records, including in connection with the preparation of such annual reports or agreed upon procedures as may be required by the Agents and (B) permit the Agents and the Financial Services Agent or their respective agents to visit the offices and properties of the Seller and its Affiliates for the purpose of discussing matters relating to the Pool Assets and the Seller's performance hereunder with any of the Seller's officers or employees having knowledge of such matters, provided that each of the Agents and the Financial Services Agent shall act reasonably to minimize any disruption to the Seller in connection therewith; provided that prior to the occurrence of a Cash Reserve Event or a Trigger Event, the Agents and the Financial Services Agent shall not be reimbursed for more than two such examinations in any year in the aggregate, if a Cash Reserve Event has occurred and is continuing, the Agents and the Financial Services Agent shall not be reimbursed for more than four such examinations in any year in the aggregate and, if a Trigger Event has occurred and is continuing, the Agents and the Financial Services Agent shall be reimbursed for all such examinations;
  - (d) at its expense, timely and fully perform and comply in all material respects with all material provisions, covenants and other obligations required to be observed, complied with or performed by the Seller under the Contracts relating to the Pool Assets;
  - (e) give the Trust and the Financial Services Agent at least 30 days' prior written notice of any change in the address of its chief place of business and chief executive office, and written notice promptly after any change in the address of an office listed under the heading "Location of Records" in Schedule "B", and each such notice shall be deemed to amend Schedule "B" accordingly;
  - (f) provide to the Trust and the Financial Services Agent not less than 30 days' prior notice of any change in the name of the Seller as stated in its constating documents;
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- (g) co-operate with, and offer such assistance as may reasonably be requested by, the chartered accountants selected by the Financial Services Agent to furnish reports in respect of the Trust, the Purchase and any Increase and the servicing of the Pool Assets under this Agreement;
- (h) upon request of the Financial Services Agent and with the Seller's written consent, such consent not to be unreasonably withheld, request the Seller's auditors to assist the auditors of the Trust, the Agents or the Financial Services Agent to the extent and in such manner as is reasonably required for such auditors to report on the status of the Pool Assets under this Agreement;
- (i) conduct Lot Checks of each Obligor in accordance with the Seller's customary practices or on such more frequent intervals as may be reasonably requested by the Required Agents and the Financial Services Agent;
- (j) promptly after becoming aware thereof, but in any event no later than two Business Days thereafter, provide the Trust and the Financial Services Agent with notice of any Servicer Termination Event that is continuing when the Seller becomes aware thereof; and
- (k) make or cause to be made all filings, recordings, and registrations and take all other actions in each jurisdiction necessary or appropriate to validate, preserve, perfect or protect the co-ownership interests of the Trust in the Pool Assets, including the right to enforce the Related Security.

## **7.2 Reporting Requirements of the Seller**

From the date hereof until the Final Termination Date, the Seller covenants and agrees that it will, unless the Trust and the Financial Services Agent shall otherwise consent in writing, deliver to the Trust and the Financial Services Agent:

- (a) within five Business Days after the Seller becomes aware of a material adverse change in the business, operations, properties or condition (financial or otherwise) (other than matters of a general economic nature) of the Seller, the Backup Servicer or the Performance Guarantor, or of an occurrence of a breach of its obligations under this Agreement or any Related Document to which it is a party, notice of such change or occurrence together with a statement by a responsible officer of the Seller specifying the facts, the nature and period of existence of any such breach, condition or event and the action the Seller has taken, is taking and proposes to take with respect thereto;
  - (b) within five Business Days of the Seller becoming aware thereof, notice of any litigation or other court or arbitration proceeding affecting the Seller which could reasonably be expected to have a Material Adverse Effect;
  - (c) within five Business Days of the Seller becoming aware thereof, notice of any litigation or other court or arbitration proceeding affecting the Backup Servicer or
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the Performance Guarantor which could reasonably be expected to have a Material Adverse Effect;

- (d) as soon as available and in any event within 45 days after the end of each fiscal quarter of the Seller, the unaudited financial statements of the Seller and, as soon as available but in any event within 90 days after the end of the fiscal year of the Seller, the unaudited financial statements of the Seller;
- (e) as soon as available and in any event within 90 days after the end of the fiscal year of the Performance Guarantor, the audited consolidated balance sheet of the Performance Guarantor and its consolidated subsidiaries as of the end of such year and the related audited consolidated statements of income and of cash flows for such year; reported on by KPMG LLP or other independent certified public accountants of nationally recognized standing;
- (f) promptly after the sending or filing thereof, copies of all reports which the Seller sent to any holders of securities which it has offered to the public;
- (g) forthwith after the occurrence of each Trigger Event and each event or the existence of any fact which, with the giving of notice or lapse of time or both, may constitute a Trigger Event, a statement of a senior financial officer or accounting officer of the Seller setting forth details as to such Trigger Event or fact or event and the action which the Seller has taken and is proposing to take with respect thereto;
- (h) notice of any material change to the Credit and Collection Policies or change to the standard operating practices or procedures;
- (i) promptly, from time to time, such other documents, records, information or reports with respect to the Pool Assets or the conditions or operations, financial or otherwise, of the Seller as the Trust, the Agents or the Financial Services Agent may from time to time reasonably request; and
- (j) promptly after any changes, the current list of Excluded Receivables.

### **7.3 Negative Covenants of the Seller**

From the date of this Agreement until the Final Termination Date, the Seller covenants and agrees that it will not, unless the Trust and the Financial Services Agent shall otherwise consent in writing:

- (a) except as otherwise provided herein and in the Related Documents, and whether by operation of law or otherwise, purport to sell, assign or otherwise dispose of, or create or suffer to exist any Security Interest upon or with respect to the Seller's or the Trust's interest in the Pool Assets if the effect of such Security Interest would be to cause the related Pool Receivable not to be an Eligible Receivable, or assign any right to receive payment under, or to enforce the Seller's interest in, any of the Pool Assets, provided, that the Seller or Servicer may sell the interest of the Seller and the Trust in Defaulted Receivables including any Contracts and Related Security with respect thereto and any judgement obtained thereon to any Person
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who is not an Affiliate of the Seller or Servicer (and does not own 5% or more of any equity interest in the Servicer or any Affiliate thereof and in which the Servicer does not own, directly or indirectly, 5% or more of the equity of such Person) on arm's-length terms in order to maximize collections thereon;

- (b) take any action that adversely affects the perfection, validity or protection of the rights of the Trust or the Financial Services Agent, as applicable, to collect amounts owing pursuant to the Pool Assets and the proceeds thereof, including the right to enforce the Related Security, except to the extent that the Seller would have done so in a similar situation with respect to other similar receivables administered by it on its own behalf; or
- (c) enter into any transaction of reorganization, amalgamation or arrangement, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution) or, other than with respect to sales, assignments, leases, licences or transfers of computer hardware and software, or of leases and licences relating thereto or any rights or benefits thereunder, in the ordinary course of business, sell, lease or otherwise dispose of its assets as an entirety or substantially as an entirety; except that the Seller may enter into a transaction of reorganization, amalgamation, or arrangement, so long as (i) such transaction could not reasonably be expected to have a Material Adverse Effect, (ii) as a condition to the completion of such transaction, the continued or reorganized corporation shall have executed an agreement of assumption to perform every obligation of the Seller hereunder and under the other agreements, instruments and documents executed and delivered by the Seller hereunder or otherwise contemplated hereby, (iii) the Backup Servicer shall have provided its written consent and acknowledged its continuing obligations under the Backup Servicer Agreement in respect of the obligations of such continued or reorganized corporation and (iv) the Performance Guarantor shall have provided its written consent and acknowledged its continuing obligations under this Agreement in respect of the obligations of such continued or reorganized corporation.

#### **7.4 Covenants of the Trust, the Agents and the Financial Services Agent**

Each of the Trust, the Agents and the Financial Services Agent covenants and agrees that it will not use personal information relating to Obligors received from the Seller other than in connection with the collection, servicing and administration of the Pool Assets and for other reasonable purposes ancillary thereto, all in accordance with and as allowed by applicable law.

### **ARTICLE 8 PERFORMANCE GUARANTEE**

#### **8.1 Performance Guarantee**

The Performance Guarantor hereby unconditionally and irrevocably guarantees to the Trust, the Agents and the Financial Services Agent the due and prompt performance, payment and observance by the Servicer (to the extent the Servicer is the Seller or an Affiliate thereof) of all of



the terms, conditions, covenants, agreements, indemnities, liabilities and obligations of any kind whatsoever (collectively, the “**Guaranteed Obligations**”) strictly in accordance with the terms hereof (the “**Performance Guarantee**”). If for any reason whatsoever, the Servicer shall fail to perform, pay or observe any of the Guaranteed Obligations, the Performance Guarantor shall forthwith perform, pay and observe, as applicable, any such of the Guaranteed Obligations as they may be required to be performed, paid or observed in accordance with the terms of this Agreement.

## **8.2 Guarantee Unconditional**

The obligations of the Performance Guarantor pursuant to this Article 8 are continuing, unconditional and absolute and, without limiting the generality of the foregoing, shall not be released, discharged, diminished, limited, impaired or otherwise affected by (and the Performance Guarantor hereby waives, to the fullest extent permitted by applicable law):

- (a) any extension, modification, amendment or renewal of, or indulgence with respect to, or substitutions for, the Guaranteed Obligations or any part thereof or any agreement relating thereto at any time;
  - (b) any failure or omission to enforce any right, power or remedy with respect to the Guaranteed Obligations or any part thereof or any agreement relating thereto, or any collateral securing the Guaranteed Obligations or any part thereof;
  - (c) any waiver of any right, power or remedy or of any default with respect to the Guaranteed Obligations or any part thereof or any agreement relating thereto or with respect to any collateral securing the Guaranteed Obligations or any part thereof;
  - (d) any release, surrender, compromise, settlement, waiver, subordination or modification, with or without consideration, of any collateral securing the Guaranteed Obligations or any part thereof, any other guarantees with respect to the Guaranteed Obligations or any part thereof, or any other obligation of any person or entity with respect to the Guaranteed Obligations or any part thereof;
  - (e) the enforceability or validity of the Guaranteed Obligations or any part thereof or the genuineness, enforceability or validity of any agreement relating thereto or with respect to any collateral securing the Guaranteed Obligations or any part thereof;
  - (f) the application of payments received from any source to the payment of indebtedness of the Seller or the Servicer other than the Guaranteed Obligations, any part thereof or amounts which are not covered by this Agreement, even though the Trust, the Agents or the Financial Services Agent, as applicable, might lawfully have elected to apply such payments to any part or all of the Guaranteed Obligations;
  - (g) any other act, or omission to act, or delay of any kind by any of the Servicer, the Seller, the Trust, the Agents, the Financial Services Agent or any other person or any other circumstance whatsoever, whether similar or dissimilar to the foregoing, which might, but for the provisions of this Section 8.2, constitute a legal or
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equitable discharge, defense, limitation or reduction of the Performance Guarantor's obligations hereunder (other than the payment or extinguishment in full of all of the Guaranteed Obligations); or

- (h) the existence of any claim, set-off or other rights which the Performance Guarantor may have at any time against the Seller, the Servicer or any other Person, including any Obligor, whether in connection with any transactions under this Agreement, any related document or any other transaction,

The foregoing provisions apply (and the foregoing waivers by the Performance Guarantor will be effective) even if the effect of any action (or failure to take action) by the Trust, the Agents or the Financial Services Agent is to destroy or diminish the Performance Guarantor's subrogation rights, the Performance Guarantors' right to proceed against the Servicer or Seller for reimbursement, the Performance Guarantors' right to recover contribution from any other guarantor or any other right or remedy which may be available to the Performance Guarantor.

### **8.3 Recourse against Servicer**

The Trust, the Agents and the Financial Services Agent shall not be required to exhaust their respective recourse against the Servicer, Seller or any other person, or under any other security or guarantee, before being entitled to performance by the Performance Guarantor under this Agreement.

### **8.4 Authorization by the Performance Guarantor**

The Trust may continue to effect Increases in accordance with the terms of this Agreement without notice to or authorization from the Performance Guarantor regardless of the Servicer's or Seller's financial or other condition at the time of any such transaction. The Performance Guarantor represents and warrants to the Trust, the Agents and the Financial Services Agent that it has adequate means to obtain from the Servicer and the Seller on a continuing basis all information concerning the financial condition of the Servicer and the Seller, and agrees with the Trust, the Agents and the Financial Services Agent that none of the Trust, the Agents and the Financial Services Agent shall have any obligation to disclose or discuss with the Performance Guarantor any information which it has respecting the financial condition of the Servicer and the Seller.

### **8.5 No Subrogation**

Until all of the Guaranteed Obligations have been paid or performed in full, the Performance Guarantor shall not exercise any right of subrogation to, and the Performance Guarantor waives, to the fullest extent permitted by law, any right to enforce, any remedy which the Trust, the Agents or the Financial Services Agent now has or may hereafter have against the Servicer or the Seller in respect of the Guaranteed Obligations and the Performance Guarantor waives any benefit of, and any right to participate in, any security now or hereafter held by the Trust, the Agents and the Financial Services Agent for the Guaranteed Obligations. The Performance Guarantor authorizes the Trust, the Agents and the Financial Services Agent, subject to applicable law, to take any action or exercise any remedy which any of the Trust, the Agents and the Financial Services Agent now have or may hereafter have against the Servicer or the Seller in respect of the Guaranteed Obligations, without notice to the Performance Guarantor.

## **8.6 Stay of Acceleration**

If acceleration of the time for payment of any amount payable by the Servicer or the Seller in respect of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of the Seller or the Servicer or any moratorium affecting the payment of the Guaranteed Obligations, all such amounts otherwise subject to acceleration will nonetheless be payable by the Performance Guarantor hereunder forthwith upon demand by the Financial Services Agent.

## **8.7 Representations and Warranties**

The Performance Guarantor represents and warrants to the Trust, the Agents and the Financial Services Agent that as at the date hereof and at each date that an Increase occurs:

- (a) it is a corporation duly incorporated, validly existing and in good standing under the laws of Delaware;
  - (b) it has full power and authority to execute and deliver this Agreement and to perform the terms and conditions hereof and is duly qualified, licensed or registered in each relevant jurisdiction to carry on its present business and operations except where the failure to be so qualified, licensed or registered does not and will not materially adversely affect such operations or its ability to perform its obligations hereunder, as applicable;
  - (c) the execution, delivery and performance by the Performance Guarantor of this Agreement, and the transactions contemplated hereby, are within the powers of the Performance Guarantor, have been duly authorized by all necessary corporate or other action (as applicable) and do not contravene (i) the constating documents or by-laws of the Performance Guarantor, or (ii) any law or any contractual restriction binding on or affecting the Performance Guarantor, the contravention of which could be expected to materially adversely affect the Performance Guarantor's ability to perform its obligations hereunder, does not result in or require the creation of any Security Interest upon or with respect to the Performance Guarantor's properties, and the consummation of the transactions contemplated hereby does not require approval of shareholders or partners or approval or consent of any Person under any contract to which the Performance Guarantor is a party, except, to the extent such approvals have been granted;
  - (d) no authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body is required for the due execution, delivery and performance by the Performance Guarantor of this Agreement, other than those that have been obtained or made, as the case may be, or any filings required after the date hereof with any securities regulators;
  - (e) this Agreement constitutes a legal, valid and binding obligation of the Performance Guarantor, enforceable against it in accordance with its terms subject to (i) applicable bankruptcy, reorganization, winding-up, insolvency, moratorium and other laws of general application limiting the enforcement of creditors' rights; (ii) the fact that the granting of equitable remedies such as specific performance and
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injunction is within the discretion of a court of competent jurisdiction; and (iii) general principles of equity;

- (f) there has been no material adverse change in the business of the Performance Guarantor since the date of the most recent audited financial statements of the Performance Guarantor delivered to the Agents and the Financial Services Agent;
- (g) there is no order, judgment or decree of any court, arbitrator or similar tribunal or Governmental Authority purporting to enjoin or restrain, and there are no proceedings before any court, arbitrator or similar tribunal or Governmental Authority which might materially adversely affect the Performance Guarantor's ability to perform its obligations hereunder; and
- (h) there are no actions, suits or proceedings in existence or, to the Performance Guarantor's knowledge, pending or threatened, against or affecting it or its property in any court, or before any arbitrator of any kind, or before or by any governmental body, in respect of which there is a reasonable possibility of an adverse determination that could materially adversely affect the Performance Guarantor's financial condition or materially adversely affect the ability of the Performance Guarantor to perform its obligations under this Agreement; and
- (i) it is not: (i) a country, territory, organization, person or entity named on an Office of Foreign Asset Control (OFAC) list; (ii) a Person that resides or has a place of business in a country or territory named on such lists or which is designated as a "Non-Cooperative Jurisdiction" by the Financial Action Task Force on Money Laundering, or whose subscription funds are transferred from or through such a jurisdiction; (iii) a "Foreign Shell Bank" within the meaning of the USA PATRIOT Act, i.e., a foreign bank that does not have a physical presence in any country and that is not affiliated with a bank that has a physical presence and an acceptable level of regulation and supervision; or (iv) a person or entity that resides in or is organized under the laws of a jurisdiction designated by the United States Secretary of the Treasury under Sections 311 or 312 of the USA PATRIOT Act as warranting special measures due to money laundering concerns.

## **8.8 Payments**

All payments to be made by the Performance Guarantor under this Performance Guarantee shall be made in full, without set-off or counterclaim and without deduction for any taxes, levies, duties, fees, deductions, withholdings, restrictions or conditions of any nature whatsoever. If at any time, or from time to time, any applicable law, regulation or international agreement requires the Performance Guarantor to make any such deduction or withholding from any such payment other than as a result of the Trust, the Agents and the Financial Services Agent or any assignee thereof being a non-resident of Canada for purposes of the *Income Tax Act* (Canada), the sums due from the Performance Guarantor with respect to such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the applicable recipient receives a net sum equal to the sum which it would have received had no deduction or withholding been required, and the Performance Guarantor shall indemnify each of the Trust, the Agents and the

Financial Services Agent on an after tax basis with respect to any such deduction or withholding, including with respect to any taxes payable by any of the Trust, the Agents and the Financial Services Agent on any increased amounts payable under this Article 8.

## **ARTICLE 9 INDEMNIFICATION**

### **9.1 Indemnification by the Seller**

Without limiting any other rights which the Trust, the Agents and the Financial Services Agent may have hereunder or under applicable law, the Seller hereby agrees to indemnify the Trust, the Agents and the Financial Services Agent, and their respective officers, directors, agents, trustees and assigns (collectively, the “**Indemnified Parties**”), from and against any and all damages, losses, claims, liabilities and related costs and expenses, including reasonable legal fees and disbursements, and any costs associated with the appointment of a Replacement Servicer, resulting from the Seller’s or Servicer’s breach of any of its duties or obligations hereunder (all of the foregoing being collectively referred to as “**Indemnified Amounts**”) awarded against or reasonably incurred by any of the Indemnified Parties and arising out of or as a result of the Seller’s or Servicer’s breach or violation of this Agreement, excluding, however, amounts (i) resulting solely from the failure of any Obligor to pay an amount owing under a Pool Receivable, or (ii) resulting from gross negligence or wilful misconduct on the part of the Trust, the Agents or the Financial Services Agent. Without limiting the generality of the foregoing but subject to the restrictions in clauses (i) and (ii) above, the Seller shall indemnify the Indemnified Parties for Indemnified Amounts awarded or incurred as aforesaid relating to or resulting from:

- (a) the failure of any information contained in a Servicer Report or a Portfolio Certificate to be true and correct (including the failure of a Pool Receivable included in the calculation of Net Receivables Pool Balance to be an Eligible Receivable as of the date of such calculation), or the failure of any other information provided to the Trust, the Agents or the Financial Services Agent with respect to Receivables or this Agreement or any Related Document to which the Seller is a party to be true and correct;
  - (b) the failure of any representation or warranty or statement made or deemed made by the Seller (or any of its officers) under or in connection with this Agreement or any Related Document to which the Seller is a party to have been true and correct in all respects when made;
  - (c) the failure by the Seller to comply with any applicable law, rule or regulation with respect to any Pool Assets or the related Contract; or the failure of any Pool Assets or the related Contract to conform to any such applicable law, rule or regulation;
  - (d) the failure to vest in the Trust a valid and enforceable perfected first ranking (as against the Seller and creditors of the Seller) co-ownership interest in the Pool Receivables and the Related Security and Collections with respect thereto;
  - (e) the failure to have filed, or any delay in filing, financing statements or other similar instruments or documents under the PPSA of any applicable jurisdiction or other
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applicable laws with respect to any Pool Receivables and the Related Security and Collections in respect thereof, whether at the time of the Purchase or any Increase at any subsequent time;

- (f) any dispute, claim, offset or defense (other than discharge in bankruptcy of the Obligor) of the Obligor to the payment of any Pool Receivable (including, without limitation, a defense based on such Receivable or the related Contract not being a legal, valid and binding obligation of such Obligor enforceable against it in accordance with its terms), or any other claim resulting from or relating to the transaction giving rise to such Receivable or relating to collection activities with respect to such Receivable (if such collection activities were performed by the Seller or any of its Affiliates acting as Servicer or by any agent or independent contractor retained by the Seller or any of its Affiliates);
  - (g) any failure of the Seller to perform its duties or obligations in accordance with the provisions hereof, or of any Related Document to which the Seller is a party, or to perform its duties or obligations under the Contracts;
  - (h) any products liability or other claim, investigation, litigation or proceeding arising out of or in connection with goods, insurance or services that are the subject of or secure any Contract;
  - (i) the commingling of Collections of Pool Assets at any time with other funds;
  - (j) any investigation, litigation or proceeding related to this Agreement or any Related Document to which the Seller is a party or the use of proceeds of Purchases or in respect of any Pool Receivable, Related Security or Contract;
  - (k) any reduction in the Investment as a result of the payment of allocations of Collections pursuant to Sections 2.7(d), 2.10(f) or 2.12, in the event that all or a portion of such payments shall thereafter be rescinded or otherwise must be returned for any reason;
  - (l) any tax or governmental fee or charge (other than any tax upon or measured by net income or gross receipts), all interest and penalties thereon or with respect thereto, and all reasonable out-of-pocket costs and expenses, including the reasonable fees and expenses of counsel in defending against the same, which may arise by reason of the purchase or ownership of the Trust's Co-Ownership Interest or other interests in the Receivables Pool or in any Related Security or Contract;
  - (m) the failure by the Seller or the Servicer to pay when due any taxes payable by it, including, without limitation, the franchise taxes and sales, excise or personal property taxes payable in connection with the Receivables;
  - (n) the failure by the Seller or the Servicer to be duly qualified to do business, to be in good standing or to have filed appropriate registration documents in any jurisdiction;
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- (o) the failure to vest and maintain vested in the Trust a perfected ownership interest in respect of the Trust's Co-Ownership Interest free and clear of any Security Interest created by or through the Seller, whether existing at the time of the consummation of the transactions contemplated hereby or at any time thereafter, other than Security Interests created by or arising through the Trust or the Financial Services Agent;
- (p) any claim for personal injury, death, property damage or product liability which may arise by reason of, result from or be caused by, or relate to the use, operation, maintenance or ownership of, the Financed Vehicles; and
- (q) any material failure of the Seller to perform its duties or obligations, as Servicer or otherwise, in accordance with the provisions of this Agreement.

## **9.2 Notification of Potential Liability**

The Seller will, upon becoming aware of circumstances that could reasonably be expected to result in material liability of the Seller under this Article 9, promptly notify the Trust, the Agents and the Financial Services Agent thereof.

## **9.3 Litigation**

At the request of the Trust, the Required Agents or the Financial Services Agent, the Seller shall, at its expense, co-operate with the Trust, the Agents and the Financial Services Agent in any action, suit or proceeding brought by or against the Trust, the Agents or the Financial Services Agent relating to any of the transactions contemplated by this Agreement or any of the Pool Assets (other than an action, suit or proceeding by the Seller, the Backup Servicer, the Performance Guarantor or any of their respective Affiliates against the Trust, the Agents or the Financial Services Agent, or by the Trust, the Agents or the Financial Services Agent against the Seller, the Backup Servicer, the Performance Guarantor or any of their respective Affiliates). In addition, the Seller agrees to notify the Trust, the Agents and the Financial Services Agent and each of the Trust, the Agents and the Financial Services Agent agrees to notify the Seller, at the Seller's expense, promptly upon learning of any pending or threatened action, suit or proceeding, if the judgment or expenses of defending such action, suit or proceeding would be covered by Section 9.1 (except for an action, suit or proceeding by the Seller, the Backup Servicer, the Performance Guarantor or any of their respective Affiliates against the Trust, the Agents or the Financial Services Agent or by the Trust, the Agents or the Financial Services Agent against the Seller, the Backup Servicer, the Performance Guarantor or any of their respective Affiliates and except for ordinary course litigation relating to the enforcement of the Pool Assets) and to consult with the Trust, the Agents and the Financial Services Agent concerning the defence and prior to settlement; provided, however, that if (i) the Seller shall have acknowledged that Section 9.1 would cover any judgment or expenses in any action, suit or proceeding, and (ii) in the sole determination of the Trust, the Agents or Financial Services Agent, as applicable, in each case acting reasonably, the Seller has the financial ability to satisfy such judgment or expenses, then the Seller shall have the right, on behalf of the Trust, the Agents or the Financial Services Agent, as applicable, but at the Seller's expense, to defend such action, suit or proceeding with counsel selected by the Seller, and shall

have sole discretion as to whether to litigate, appeal or enter into an exclusively monetary settlement.

#### **9.4 Tax Indemnity**

The Seller agrees to defend and to save the Indemnified Parties harmless from and against any and all liabilities arising out of the transactions contemplated by this Agreement with respect to or resulting from any delay by the Seller in paying or any omission to pay any Taxes otherwise required under this Agreement or any Related Document to which the Seller is a party to be paid or withheld and remitted by or on behalf of the Seller on its own behalf, on behalf of the Trust, the Agents, or the Financial Services Agent, or on behalf of any Obligor. If the Seller shall be required by law to deduct or withhold any Taxes from or in respect of any sum payable by or on behalf of the Seller on its own behalf or on behalf of any Obligor to the Trust, the Agents or the Financial Services Agent hereunder or under any Related Document to which the Seller is a party or in connection with the execution, delivery, filing and recording hereof or thereof and of the other documents to be delivered hereunder and thereunder and the consummation of the transactions contemplated hereby, or if the Trust, the Agents or the Financial Services Agent shall be required to pay any Taxes in respect of any sum received by the Trust, the Agents or the Financial Services from the Seller hereunder or under any Related Document to which the Seller is a party:

- (a) the sum payable to the Trust, the Agents or the Financial Services Agent, as applicable, shall be increased as may be necessary (or an amount shall be owed to the Trust, the Agents or the Financial Services Agent, as applicable) so that, after all required deductions, withholdings or payments in respect of such Taxes have been made, the Trust, each Agent or the Financial Services Agent, as applicable, receives or retains an amount equal to the sum that the Trust, the Agents or the Financial Services Agent, as applicable, would have received or retained had no such deductions, withholdings or payments been made;
- (b) the Seller shall make such deductions or withholdings; and
- (c) the Seller shall pay forthwith the full amount deducted or withheld to the relevant taxation authority or other authority in accordance with applicable law and will provide to the Trust, the Agents or the Financial Services Agent, as applicable, copies of such forms as are required to be provided to such authority evidencing the payment by the Seller.

For greater certainty, it is hereby acknowledged by the parties hereto that the Seller shall not be liable to indemnify the Indemnified Parties under this Section for any Taxes payable by, or required to be withheld by, the Seller on account of Taxes payable on the income or gains of the Trust, the Agents or the Financial Services Agent, Taxes payable by virtue of the non-resident status of the Trust, the Agents or the Financial Services Agent, or Taxes payable on the capital of the Trust, the Agents or the Financial Services Agent.

#### **9.5 Tax Credit**

If a payment (a “**Grossed-up Payment**”) made by the Seller includes an amount (a “**Gross-up**”) referred to in Section 9.4, and the Trust, the applicable Agent, or the Financial Services Agent, as



applicable, is able to apply for or otherwise take advantage of any tax credit or deduction in computing income or similar benefit by reason of any withholding or deduction made by the Seller in respect of the Grossed-up Payment (such credit, deduction or benefit hereinafter being referred to as a “**Tax Credit**”), then the Trust, such Agent or the Financial Services Agent, as applicable, will, at the expense of the Seller, use reasonable endeavours to obtain the Tax Credit and, if it realizes the Tax Credit (whether by way of reducing taxes payable, receiving a tax refund, or otherwise), the Trust, such Agent or the Financial Services Agent, as applicable, shall, subject to the provisos to this Section 9.5, pay to the Seller such amount, if any (not exceeding the Gross-up) as is determined by the Trust, such Agent or the Financial Services Agent, as applicable, to be equal to the net after-tax value to the Trust, such Agent or the Financial Services Agent, as applicable, of such part of the Tax Credit as is reasonably attributable to such withholding or deduction having regard to all dealings giving rise to similar credits, deductions or benefits in relation to the same tax period and to the cost of obtaining the same. Any such reimbursement shall be conclusive evidence of the amount due to the Seller absent manifest error and shall be accepted by the Seller in full and final settlement of its rights of reimbursement hereunder; provided that notwithstanding the foregoing, (i) nothing herein contained shall interfere with the right of the Trust, each Agent and the Financial Services Agent to arrange its respective tax affairs in whatever manner it deems fit and, in particular, none of the Trust, the Agents and the Financial Services Agent shall be under any obligation to claim relief from its income or similar tax liability in respect of any such deduction or withholding in priority to any other relief, claims, credits or deductions available to it; and (ii) none of the Trust, the Agents and the Financial Services Agent shall be obligated to disclose to the Seller any information regarding its tax affairs or tax computations; provided, further, that if, as a result of (x) an audit of the Trust, any Agent or the Financial Services Agent by its auditors or by a taxing authority, or (y) any change to the affairs of the Trust, any Agent or the Financial Services Agent, as applicable, or to the available information concerning such affairs, which change is relevant to the determination that reimbursement with respect to a Tax Credit is payable to the Seller hereunder, the Trust, any Agent or the Financial Services Agent, as applicable, determines, in its reasonable discretion, that any such payment made by the Trust, such Agent or the Financial Services Agent, as applicable, to the Seller hereunder would not have been made had the Trust, such Agent or the Financial Services Agent, as applicable, known the results of such audit or anticipated such change, or would have been made in a smaller amount, then the Seller shall pay to the Trust, such Agent or the Financial Services Agent, as applicable, the amount of such payment which the Trust, such Agent or the Financial Services Agent, as applicable, so determines, acting reasonably, to have been an overpayment.

## **ARTICLE 10 MISCELLANEOUS**

### **10.1 Liability of the Trust, the Agents and the Financial Services Agent**

None of Computershare Trust Company of Canada, the Agents or the Financial Services Agent, nor any of their respective directors, officers, agents or employees, will be liable pursuant to this Agreement or any Related Document to which such Person is a party for any action taken or omitted to be taken by it or them hereunder or thereunder or in connection herewith or therewith, except for its or their own negligence or wilful misconduct. Without limiting the generality of the foregoing, and notwithstanding any term or provision hereof to the contrary, the Seller hereby

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acknowledges and agrees that, except as otherwise provided in the first sentence of this Section, none of the Agents or the Financial Services Agent has any duties or obligations to, will incur any liability to, or act as an agent in any capacity for, the Seller.

## **10.2 Change in Circumstances**

If, at any time:

- (a) the introduction of, or any change in, or in the interpretation, administration application or implementation of, any applicable law or regulation by any court or Governmental Authority, in each case, adopted, issued, taking effect or occurring after the later of: (i) the date hereof; and (ii) the most recent date on which the Termination Date is extended in accordance with the terms of this Agreement; or
- (b) the compliance by any of the Financial Services Agent, the Agents, the Lenders and/or any liquidity provider or credit enhancement provider to any Lender, or any of their Affiliates (each, an “**Affected Person**”), with any changed or introduced guideline, direction or request, or any change in the interpretation or administration thereof made after the later of: (i) the date hereof; and (ii) the most recent date on which the Termination Date is extended in accordance with the terms of this Agreement, from or by any Governmental Authority or professional self-regulating or governing body (including, for greater certainty, the Office of the Superintendent of Financial Institutions Canada, the Board of Governors of the United States Federal Reserve System or any other body or entity governing accounting treatment or reserve requirements) or any change in generally accepted accounting principles including the adoption of International Financial Reporting Standards (whether or not having the force of law);

has in the reasonable opinion of the Affected Person, the effect of:

- (i) (A) increasing the costs, expenses or liabilities of, or imposes, modifies or deems applicable any reserve, assessment, fee, tax, insurance charge, special deposit or similar requirement against assets of, deposits with or for the account of, in each case any Affected Person (including as a result of a change in the Affected Person’s capital position), as such costs, expenses or liabilities relate to a Lender making, funding or maintaining a Loan under the Loan Agreement in connection with the Investment hereunder, provided that in the case of the Agents, the Financial Services Agent or any of its respective Affiliates, such increased costs, liabilities or expenses shall be limited to those that are directly attributable to increases in regulatory capital of such Agent, the Financial Services Agent or such Affiliates, as applicable, (B) reducing the rate of return (on capital or otherwise) to any Affected Person in connection with, or as a result of the Affected Person either having to raise additional capital or incurring a deteriorated capital position as a result of a Lender making, funding or maintaining a Loan under the Loan Agreement in connection with the Investment hereunder, (C) requiring the payment of any Taxes on or calculated with reference to
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the capital or debt of any Affected Person or (D) requiring any Affected Person to make any payment it would not otherwise be required to make; or

- (ii) reducing the amount received or receivable by a Lender under this Agreement or any Related Document or in respect of any Pool Receivable, and provided that any such introductions or changes enumerated in clauses (a) and (b) above are of application across any applicable industry in which such Affected Person participates and are not limited in their application to one or more Affected Persons,

then the Seller shall, from time to time upon demand by any Agent or the Financial Services Agent, pay forthwith to the applicable Affected Person, either directly or indirectly through the related Agent, the amount of any such increased costs, expenses or liabilities incurred, reduction in amounts received or receivable, reduction in rate of return or required payment made or to be made; provided that the Seller shall not be obligated to indemnify any Affected Person for any period in excess of 30 days prior to receipt of such notice. The requesting party shall deliver to the Seller a certificate setting forth the cause and computation of the amount of any such increased costs, expenses or liabilities, reduction in amounts received or receivable, reduction in rate of return, or required payment made or to be made, which computation may utilize such averaging and attribution methods as the applicable Affected Person, believes to be fair, acting reasonably. Upon becoming aware thereof, the applicable Agent or the Financial Services Agent, as applicable, shall, as soon as reasonably possible thereafter, notify the Seller of any event or circumstance which will result in any payment being required to be made by the Seller pursuant to this Section 10.2.

### **10.3 Amendments, Waivers, Etc.**

No amendment or waiver of any provision of this Agreement nor consent to any departure by the Seller or the Trust therefrom shall be effective unless the same shall be in writing and signed by (i) each party hereto (with respect to an amendment) or (ii) each party giving such waiver or consent (with respect to a waiver or consent), as the case may be, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

### **10.4 Notices, Etc.**

All notices and other communications provided for hereunder shall, unless otherwise stated herein, be in writing (including electronic transmission) and mailed or delivered, to each party hereto, at its address set forth under its name on the signature page hereof or at such other address as shall be designated by such parties in a written notice to the other party hereto. All such notices and communications shall be effective, in the case of written notice, on the Business Day it is delivered, and, in the case of notice by telecopy or electronic transmission, when electronically transmitted against receipt of answer back, in each case addressed as aforesaid.

### **10.5 No Waiver; Remedies**

No failure on the part of the Trust, the Agents or the Financial Services Agent to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise

of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

**10.6 Binding Effect; Assignability**

This Agreement shall be binding upon and enure to the benefit of the Seller, the Performance Guarantor, the Trust, each Agent and the Financial Services Agent and their respective successors and permitted assigns; provided, however, that (i) neither the Seller nor the Performance Guarantor may assign its rights hereunder or any interest herein without the prior written consent of the Trust and the Financial Services Agent, such consent not to be unreasonably withheld or delayed, and (ii) prior to the occurrence of a Trigger Date, none of the Trust, the Agents or the Financial Services Agent may assign its rights hereunder or any interest herein, without the prior written consent of the Seller, such consent not to be unreasonably withheld, provided that the Trust shall be permitted to assign its rights hereunder and interests herein without consent of the Seller to the Financial Services Agent in accordance with the Loan Agreement; and provided further that each of the Agents and the Financial Services Agent may assign its rights hereunder and any interest herein without the consent of the Seller or the Trust in connection with, and in accordance with an assignment of its respective rights and interest under the Loan Agreement.

**10.7 Costs and Expenses**

In addition to the rights of indemnification granted to the Trust under Article 9, the Seller shall pay to the Trust, the Agents and the Financial Services Agent all reasonable out-of-pocket costs and expenses (including the reasonable fees and disbursements of counsel on a substantial indemnity basis) incurred by the Trust, the Agents and the Financial Services Agent and their respective agents in connection with the preparation of this Agreement and the Related Documents, the consummation of the transactions contemplated hereby and thereby and the enforcement of the Seller's obligations and liabilities under this Agreement or under any Related Documents. The Servicer shall also pay to the Trust, the Agents and the Financial Services Agent such expenses as the Trust, the Agents and the Financial Services Agent may reasonably incur and such fees as the Trust, the Agents, the Financial Services Agent and the Seller agree the Trust, the Agents and the Financial Services Agent may charge in respect of each amendment to this Agreement or Related Document and each waiver of any provision of this Agreement or Related Document requested by the Seller or required or initiated as a result of the Seller's actions.

**10.8 Confidentiality**

Each of the Trust, the Seller, the Servicer, the Performance Guarantor, the Agents and the Financial Services Agent shall make all reasonable efforts to hold all non-public information obtained pursuant to this Agreement, the Related Documents and the transactions contemplated hereby and thereby or effected in connection herewith or therewith in accordance with its customary procedures for handling its confidential information of this nature, provided that, notwithstanding the foregoing, the Trust, the Seller, the Servicer, the Performance Guarantor, the Agents and the Financial Services Agent may make disclosure of such non-public information as requested or required by any governmental agency or representative thereof or pursuant to legal process or when required under applicable law, and to its professional advisors; provided that, unless specifically prohibited by applicable law or court order, each party hereto shall notify the other

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party hereto of any request by any governmental agency or representative thereof for disclosure of any such non-public information prior to disclosure of such information to permit the party affected to contest such disclosure, if possible.

#### **10.9 Effect of Agreement**

Each of the Seller and the Trust hereby expressly acknowledges that this Agreement, except as specifically provided with respect to the duties and obligations of the Servicer, is intended to create a relationship of purchaser and vendor between the Seller and the Trust. Each of the Seller and the Trust hereby expressly disclaims any intention to establish a trust relationship (except to the extent expressly provided herein) or to constitute either the Seller or the Trust, or any other Person party hereto, as the agent of the other except to the extent that the Seller, in its capacity as the Servicer, is acting as an agent of the Trust. The Seller, on the one hand, and the Trust, on the other, covenant with each other that they will not, at any time, allege or claim that a relationship of trust or agency is created hereby, except as otherwise expressly provided for herein.

#### **10.10 Agreement Non-Exclusive**

The parties hereby acknowledge and agree that this Agreement does not create any rights of exclusivity between them.

#### **10.11 No Set-off**

All payments to be made by the Seller or the Servicer hereunder shall be made without any deduction, set-off or counterclaim.

#### **10.12 Termination**

This Agreement shall remain in full force and effect until the Final Termination Date; provided, however, that the rights and remedies of the Trust, the Agents and the Financial Services Agent with respect to any incorrect representation or warranty made or deemed to be made by the Seller herein and the indemnification and payment provisions hereof shall be continuing and will survive any termination hereof for a period of six years commencing on the Final Termination Date.

#### **10.13 Discharge of Certain Registrations in the Province of Quebec**

So long as no Servicer Termination Event shall have occurred, the Servicer shall have the authority to sign, for and on behalf of the Trust or the Financial Services Agent, as applicable, any document reasonably required to be signed by the Trust or the Financial Services Agent, as applicable, and the Seller and filed in the Register of Personal and Movable Real Rights (Quebec) (the “**Register**”) for the purpose of effecting the discharge of any hypothec, lease, sale with a reservation of ownership, sale with a right of repurchase or any other registration forming part of the Pool Assets and registered in the Register, provided such discharge is granted by the Servicer in the ordinary course of its business.

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#### **10.14 Execution in Counterparts**

This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement. This Agreement shall be valid, binding, and enforceable against a party only when executed and delivered by an authorized individual on behalf of the party by means of (i) an original manual signature; (ii) a faxed, scanned (including in portable document format (pdf.) or www.docusign.com), or photocopied manual signature; or (iii) any electronic signature permitted by Parts 2 and 3 of the *Personal Information Protection and Electronic Documents Act* (Canada), the *Electronic Commerce Act, 2000* (Ontario) and other similar federal or provincial laws based on the *Uniform Electronic Commerce Act* of the Uniform Law Conference of Canada or its *Uniform Electronic Evidence Act*, as the case may be. Each electronic signature, or faxed, scanned, or photocopied manual signature shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each party hereto shall be entitled to conclusively rely upon, and shall have no liability with respect to, any faxed, scanned, or photocopied manual signature, or other electronic signature, of any other party and shall have no duty to investigate, confirm or otherwise verify the validity or authenticity thereof.

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IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective duly authorized officers as of the date first written above.

**AUTOMOTIVE FINANCE CANADA INC.**

Per: /s/ Amy Wirges

Name: Amy Wirges

Title: Senior Vice President of Finance & Treasurer

Address:

1717 Burton Road  
Vars, ON  
K0A3H0

Attention: Senior Vice President of Legal  
Email: [\*\*]

With a copy to:  
Automotive Finance Corporation  
11299 N. Illinois Street  
Carmel, Indiana  
46032

Attention: Senior Vice President of Legal  
Email: [\*\*]

And to:

Automotive Finance Corporation  
11299 N. Illinois Street  
Carmel, Indiana  
46032

Attention: Amy Wirges  
Email: [\*\*]

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**COMPUTERSHARE TRUST COMPANY OF CANADA**, as trustee of **AFCI FUNDING TRUST**, by its Administrative Agent, **AUTOMOTIVE FINANCE CANADA INC.**

Per: /s/ Amy Wirges

Name: Amy Wirges

Title: Senior Vice President of Finance & Treasurer

Address:

1717 Burton Road  
Vars, ON  
K0A3H0

Attention: Senior Vice President of Legal  
Email: [\*\*]

With a copy to:  
Automotive Finance Corporation  
11299 N. Illinois Street  
Carmel, Indiana  
46032

Attention: Senior Vice President of Legal  
Email: [\*\*]

And to:

Automotive Finance Corporation  
11299 N. Illinois Street  
Carmel, Indiana  
46032

Attention: Amy Wirges  
Email: [\*\*]

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**KAR AUCTION SERVICES, INC.**

Per: /s/ Scott A. Anderson

Name: Scott A. Anderson

Title: Interim Chief Financial Officer and Chief  
Accounting Officer

Address:

11299 N. Illinois Street

Carmel, IN 46032

USA

Attention: Chuck Coleman

Executive Vice President, Chief Legal Officer and Secretary

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**BMO NESBITT BURNS INC.**, as Financial Services Agent and  
Agent for the BMO Lender Group

By: /s/ John Vidinovski  
Name: John Vidinovski  
Title: Managing Director

By: /s/ Kevin Brown  
Name: Kevin Brown  
Title: Director

BMO Nesbitt Burns Inc.  
3rd Floor Podium  
1 First Canadian Place  
Toronto, Ontario  
M5X 1H3

Attention: Securitization  
Phone: [\*\*]  
Email: [\*\*]

With a copy to:  
BMO Capital Markets  
115 South LaSalle Street, 37W  
Chicago, IL 60603

Attention: Robert Cunliffe  
Phone: [\*\*]  
Email: [\*\*]

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**ROYAL BANK OF CANADA**, as Agent for RBC Lender Group

Per: /s/ Nur Khan

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Name: Nur Khan

Title: Authorized Signatory

Per: /s/ Ian Benaiah

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Name: Ian Benaiah

Title: Authroized Signatory

Royal Bank of Canada  
Royal Bank Plaza, North Tower  
200 Bay Street, 2<sup>nd</sup> Floor  
Toronto, Ontario  
M5J 2W7

Attention: Managing Director  
Telephone: [\*\*]  
Email: [\*\*]

**Certification of Chief Executive Officer  
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Peter J. Kelly, certify that:

- 1) I have reviewed this Quarterly Report on Form 10-Q of KAR Auction Services, 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 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; and
- 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/ PETER J. KELLY

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Peter J. Kelly  
*Chief Executive Officer*

Date: May 3, 2023

**Certification of Chief Financial Officer  
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Brad S. Lakhia, certify that:

- 1) I have reviewed this Quarterly Report on Form 10-Q of KAR Auction Services, 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 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; and
- 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/ BRAD S. LAKHIA

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Brad S. Lakhia  
*Executive Vice President and Chief Financial Officer*

Date: May 3, 2023

**Certification 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**

In connection with the Quarterly Report on Form 10-Q of KAR Auction Services, Inc. (the "Company") for the period ended March 31, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Peter J. Kelly, as Chief Executive Officer of the Company, certify, to the best of my knowledge, pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- 1) The report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934; and
- 2) the information contained in this Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ PETER J. KELLY

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Peter J. Kelly  
*Chief Executive Officer*

Date: May 3, 2023

**Certification 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**

In connection with the Quarterly Report on Form 10-Q of KAR Auction Services, Inc. (the "Company") for the period ended March 31, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Brad S. Lakhia, as Chief Financial Officer of the Company, certify, to the best of my knowledge, pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- 1) The report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934; and
- 2) the information contained in this Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ BRAD S. LAKHIA

Brad S. Lakhia  
*Executive Vice President and Chief Financial Officer*

Date: May 3, 2023