

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION
www.flsb.uscourts.gov

In re: Jointly Administered
SCOOTER SUPER STORE OF AMERICA, INC., Case No: 10-32607-JKO
SCOOTER SUPER STORE OF AMERICA- Case No: 10-32611-JKO
MIDTOWN, LLC,
Debtors. Chapter 11

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY, TO PROHIBIT THE
USE OF CASH COLLATERAL, AND FOR DISMISSAL OR CONVERSION**

GE Commercial Distribution Finance Corporation ("CDF"), a creditor and party in interest, by and through counsel, for its Motion for Relief from the Automatic Stay, to Prohibit the Use of Cash Collateral, and for Dismissal or Conversion states as follows:

1. This Court has jurisdiction over this matter pursuant to Sections 157 and 1334 of Title 28 of the United States Code. This is a core proceeding pursuant to Section 157(b)(2)(A) and (G) of Title 28 of the United States Code.
2. Debtors commenced these cases by filing voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code on August 2, 2010 (the "Petition Date"). A creditors' committee has been appointed in these cases.
3. Debtors operate scooter sales and repair businesses.
4. Prior to the Petition Date, on or about August 21, 2007, Debtor Scooter Superstore of America, Inc. ("Scooter Florida") entered into an Inventory Financing Agreement (the "Scooter Florida Security Agreement") with CDF. A true and correct

copy of the Scooter Florida Security Agreement is attached hereto and incorporated herein as Exhibit A.

5. The Scooter Florida Security Agreement granted CDF a security interest in the following property, whether then owned or thereafter existing, and wherever located:

[A]ll Accounts, Inventory, Equipment, Fixtures, other Goods, General Intangibles (including without limitation, Payment Intangibles), Chattel Paper (whether tangible or electronic), Instruments (including without limitation, Promissory Notes), Deposit Accounts, Investment Property and Documents and all Products and Proceeds of the foregoing (the "Scooter Florida Collateral").

6. On or about September 4, 2007, CDF perfected its security interest in the Scooter Florida Collateral by filing a UCC-1 financing statement with the Florida Secured Transaction Registry, file number 200706438823. A true and correct copy of said UCC-1 financing statement is attached hereto and incorporated herein as Exhibit B.

7. Prior to the Petition Date, on or about August 29, 2007, Debtor Scooter Superstore of America-Midtown, LLC ("Scooter Georgia") entered into an Inventory Financing Agreement (the "Scooter Georgia Security Agreement"; collectively, with the Scooter Florida Security Agreement, the "Security Agreements") with CDF. A true and correct copy of the Scooter Georgia Security Agreement is attached hereto and incorporated herein as Exhibit C.

8. The Scooter Georgia Security Agreement granted CDF a security interest in the following property, whether then owned or thereafter existing, and wherever located:

[A]ll Accounts, Inventory, Equipment, Fixtures, other Goods, General Intangibles (including without limitation, Payment

Intangibles), Chattel Paper (whether tangible or electronic), Instruments (including without limitation, Promissory Notes), Deposit Accounts, Investment Property and Documents and all Products and Proceeds of the foregoing (the "Scooter Georgia Collateral"; collectively, with the Scooter Florida Collateral, the "Collateral").

9. On or about September 6, 2007, CDF perfected its security interest in the Scooter Georgia Collateral by filing a UCC-1 financing statement with the Clerk of the Superior Court of Cobb County, Georgia, file number 0332007-08812. A true and correct copy of said UCC-1 financing statement is attached hereto and incorporated herein as Exhibit D.

10. As of the Petition Date, Debtors owed CDF, jointly and severally, approximately \$6.05 million. As of January 25, 2011, Debtors owed CDF \$5,886,420.41, without considering attorney fees and expenses.

11. CDF has a first priority, properly perfected security interest in the Collateral. Pre-petition, CDF provided floorplan financing for certain inventory (the "Floorplan Inventory").

12. Based upon its experience in the industry, CDF estimates that the remaining Floorplan Inventory, as of December 29, 2010, was worth at most \$4,729,000 and that Debtors' other inventory collateral, as of October 10, 2010, was worth at most \$480,363. CDF has not independently valued its other Collateral to date, but CDF would point out to the Court that (a) all of Debtors' scheduled accounts receivable were older than 90 days as of the Petition Date and according to the operating reports on file, none have been collected post-petition; and (b) equity must be determined on a case by case basis, as Debtors are jointly and severally responsible for the entire debt amount to CDF and these cases have not been substantively consolidated.

13. Based upon the operating reports on file, Debtors appear to have sold at least \$67,247.34 worth of non-Floorplan Inventory, through December alone, without remitting any adequate protection payments to CDF for the sales of the same.¹

14. CDF has performed all obligations required of it under the Security Agreements.

15. Pre-petition, Debtors defaulted under the Security Agreements by failing to make payments as due, including failing to pay monthly interest and failing to pay for sold inventory. Accordingly, CDF filed an action for immediate writ of possession on July 27, 2010 in the United States District Court for the Northern District of Georgia, which action was pending as of the Petition Date.

16. Debtors sold inventory financed by CDF for which they had not tendered payment in the amount of \$331,298.48 as of July 29, 2010, a condition known in the industry as "sold out of trust". Of the "sold out of trust" balance, Debtors sold \$199,257.22 while workout discussions between the parties were ongoing or after CDF filed its replevin action in District Court.

17. Pursuant to the Security Agreements and applicable provisions of the Uniform Commercial Code, CDF is entitled to immediate possession of the Collateral.

18. Debtors' authority to use cash collateral expired on October 31, 2010², CDF's counsel was not provided a proposed budget for approval for the use of cash

¹ The \$67,247.34 figure is derived by totaling the operating reports' figures for inventory sold and deducting the inventory payments Debtors report on the same operating reports as having been made to CDF. Since the December combined profit loss statement for Scooter Florida is illegible, the weekly report received by CDF on December 28, 2010 has been used to calculate Scooter Florida's December figure; Scooter Georgia's December sales have been disregarded here, as its December operating report shows a negative cost of goods sold.

² The orders in this case only extended Scooter Florida's cash collateral authority through October 5, 2010 [docket # 106] and Scooter Georgia's cash collateral authority through September 30, 2010 [docket # 111], but CDF agreed to Debtors' continued use of cash collateral through October 31, 2010. As this Court has

collateral for November or December 2010, nor has CDF consented to the continued use of cash collateral.

19. A review of Debtors' monthly operating reports for November and December 2010 appears to show that \$194,732.41 in cash collateral was used in those months alone in violation of 11 U.S.C. § 363.

20. Specifically, Scooter Florida's reports show as follows:

- a. \$48,305.92 in disbursements, over and above those disbursements to CDF, during November 2010;
- b. \$52,515.33 in disbursements, over and above those disbursements to CDF, during December 2010; and
- c. No "other receipts", which is defined as loans from insiders and other sources.

21. Scooter Georgia's reports show as follows:

- a. \$45,877.73 in disbursements, over and above those disbursements to CDF, during November 2010;
- b. \$48,034.43 in disbursements, over and above those disbursements to CDF, during December 2010; and
- c. No "other receipts", which is defined as loans from insiders and other sources.

22. If Debtors have no "other receipts", how can they have been using anything other than cash collateral?

recognized, Debtors were to submit an agreed order for the further use of cash collateral after the October 7, 2010 hearing, but have not done so.

23. On January 19, 2011, Debtors filed a Motion for Continued Authorization to Use Cash Collateral [docket # 171]. The motion seeks authority to use cash collateral for the month of January 2011 in the total amount of \$86,133, but does not address November and December 2010. CDF opposes such motion, due to the facts outlined herein and in its separately filed objection. The January 18, 2011 weekly report provided to CDF by Debtors shows that \$52,841.27 in expenses had already been incurred, if not paid, by Debtors in January prior to the filing of the pending motion (\$9,086.59 for Hollywood, \$8,814.88 for Ormond Beach, \$12,463.13 for Jacksonville, \$11,680.19 for Midtown, and \$10,796.48 for Norcross). Debtors have the burden of proof on the issue of adequate protection, and CDF respectfully submits that the burden cannot be met.

24. Debtors' post-petition performance, based upon a review of Debtors' operating reports shows net income or losses by location as follows:

	<u>August</u>	<u>September</u>	<u>October</u>	<u>November</u>	<u>December³</u>
HWD	929.36	24,478.49	559.54	(9,640.57)	4,058.18
ORM	(9,285.88)	(8,487.02)	(3,769.91)	(17,622.35)	15,136.40
JAX	21,718.56	(15,259.87)	14,638.69	(20,925.43)	4,336.57
MID	10,186.24	(4,478.63)	(45.53)	16,802.34	(13,040.08)
NOR	(2,691.22)	(15,028.55)	(6,167.21)	(24,167.73)	21,469.13
FBN	10,023.99	(3,221.97)	(896.46)	(7,130.50)	16,348.54
Total	30,881.05	(21,997.55)	4,319.12	(62,684.24)	48,308.74

25. Based upon these figures, losses from the Petition Date through December 2010 totaled \$1,172.88, and if December is disregarded, reported losses are \$49,481.62.

³ The combined profit loss statement for Scooter Florida in the December operating report is illegible. Therefore, the figures listed for the Scooter Florida locations for December are from the weekly reports received by CDF on December 28, 2010.

More troubling than that is the November figures, which show \$62,684.24 in losses, are more than 4 times the amount of losses (\$14,657), for which Debtors' budgeted, according to their November weekly reports. Further, it appears that Debtors may be overstating their net income, at least in December 2010, by understating their costs of goods sold. For example, the Midtown location showed \$13,483.21 in sales for December, with only \$1,474.66 in costs of goods sold (over a 900% mark-up). Similarly, Norcross showed \$43,380.53 in sales for December, with only \$2,681.80 in costs of goods sold (over a 1600% mark-up).

26. On or about January 13, 2011, it came to the attention of CDF that a potential transaction was being discussed between Debtors and some independent third party for the purchase of certain assets of Debtors, specifically related to the KYMCO line of product. On or about that same date, counsel for CDF sent a letter to counsel for Debtors inquiring into those discussions.

27. On or about January 19, 2011, Bob Kelly, one of the counsel for Debtors, contacted counsel for CDF and informed him that there was a sale being contemplated but that such sale was one that was customary in the industry and was simply a sale of several scooters to another dealer and that Debtors would be paid full value for such units. Specifically, counsel for Debtors assured counsel for CDF that it was a sale in the ordinary course and did not need court approval.

28. On or about January 20, 2011, CDF was provided (not by Debtors) a copy of what purports to be a Buy/Sell Agreement (the "Agreement") by and between Scooter Georgia and Twist n Scoot, LLC. The Agreement is dated December 11, 2010, has a

closing date of January 20, 2011 and is attached hereto and incorporated herein as Exhibit E.

29. According to the terms of the Agreement, Scooter Georgia agreed to sell and transfer to Twist n Scoot certain of its assets, including, but not limited to, existing dealer agreements, franchise rights, domain names, web sites, store fixtures, signage, illuminated signs, posters, banners, marketing materials, tools, all parts and accessories, all dealer data, repair manuals, books, deal business manuals, customer files, mailing lists for existing customers, and up to 30 new, unused and undamaged motor-scooter models chosen from one or more Scooter Superstore of America locations having a minimum wholesale value of \$50,000.00.

30. Further, according to the terms of the Buy/Sell Agreement, the sales price for such assets was \$45,000.00.

31. The sale further purports to be one free and clear of all liens and encumbrances, yet has not been noticed out to creditors.

32. CDF has filed an Objection to Unauthorized Sale of Assets [docket # 174] with regard to such sale.

33. Upon information and belief, Debtors are currently vacating their Fairburn location, due to a foreclosure sale scheduled for February 1, 2011.

34. Although Debtors negotiated a sale with Piaggio Group Americas, Inc. which was approved by Agreed Order entered by this Court on December 30, 2010 [docket #167], the inventory removal requirements contained therein have not been complied with and accordingly, CDF has not received timely payment.

35. Debtors' exclusivity periods for filing plans of reorganization expired on November 30, 2010, and Debtors did not timely file a motion to extend the same. Debtors have not shared a draft plan of reorganization with, or discussed proposed terms of the same, with CDF's counsel.

Stay Relief

36. Section 362(d) of the Bankruptcy Code provides, in pertinent part, as follows:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay:

- (1) for cause, including the lack of adequate protection of an interest in property of such party in interest; or
- (2) with respect to a stay of an act against property under subsection (a) of this section, if:
 - (A) the debtor does not have any equity in such property; and
 - (B) such property is not necessary to an effective reorganization....

37. Section 362(d) is written in the disjunctive and authorizes relief from the stay if a party with an interest in property of the estate can demonstrate cause, including lack of adequate protection, or establish that the debtor has no equity in the property and that the property is not necessary to an effective reorganization.

38. Pursuant to 11 U.S.C. § 362(d)(1), sufficient cause exists, including the lack of adequate protection, for lifting the automatic stay as to CDF and the Collateral, to permit CDF to exercise any and all of its state law and contractual rights and remedies with respect to the Collateral.

39. Although the Bankruptcy Code does not define adequate protection, it lists examples in Section 361, which include periodic cash payments or replacement liens.

Regardless of the form that adequate protection takes, the secured creditor is entitled to receive the “indubitable equivalent of such entity’s interest in such property.” 11 U.S.C. § 361(3). Debtors are currently benefiting from the use of the Collateral, which continues to depreciate. Debtors have failed to adequately protect CDF for the Collateral, in particular the Collateral other than the Floorplan Inventory, may be selling the Collateral outside of the ordinary course of business without court approval, and have apparently used cash collateral since October 31, 2010 without authority, and thus CDF is entitled to relief from the automatic stay.

40. Likewise, pursuant to 11 U.S.C. § 362(d)(2), sufficient cause exists for lifting the automatic stay as to CDF and the Collateral to permit CDF to exercise any and all of its state law and contractual rights and remedies with respect to the Collateral, in that (1) Debtors, due to the sales out of trust and substantial arrearage in interest payments, have no equity in the Collateral and (2) Debtors appear to have no prospects for a successful reorganization, particularly given their lack of a post-petition floorplan lender, their past sales out of trust, the apparently imminent foreclosure of the Fairburn location, the failure to file a plan of reorganization, the expiration of Debtors’ exclusivity period, and the apparent impermissible use of cash collateral, so the Collateral is not necessary to their reorganization.

Cash Collateral

41. Additionally, CDF is entitled to adequate protection of its liens against Debtors’ assets and proceeds thereof that constitute cash collateral. At least certain of Debtors’ presently existing and hereafter arising cash constitutes cash collateral of CDF within the meaning of 11 U.S.C. § 363. Upon information and belief, based upon weekly

reports provided to it, the monthly operating reports, and the fact that Debtors continue to operate their businesses, Debtors have been using CDF's cash collateral since October 31, 2010, without permission of CDF or court order. Under 11 U.S.C. § 363, Debtors are prohibited from using cash collateral without the permission of the secured creditor or order of the Court. No motion for the continued use of cash collateral was filed until January 19, 2011. CDF does not consent to the ongoing use of cash collateral and reserves all rights with respect to adequate protection of its cash collateral, and the priority of its liens therein.

Dismissal or Conversion

42. The facts outlined above indicate an absence of a reasonable likelihood of rehabilitation, a possible sale outside the ordinary course of business, and unauthorized use of cash collateral substantially harmful to CDF, and such constitutes cause for conversion or dismissal pursuant to 11 U.S.C. § 1112(b). Further, as Debtors appear to have no equity in the Collateral, it makes no sense for Debtors to incur the administrative and U.S. Trustee fees associated with a chapter 11 case.

WHEREFORE, CDF prays for the following relief:

A. For entry of an Order (1) granting CDF relief from the automatic stay provisions of 11 U.S.C. § 362, permitting CDF to exercise any and all of its state law and contractual rights and remedies with respect to the Collateral, including returning the Floorplan Inventory to the applicable manufacturers, and providing that Debtors shall immediately cease use of and cooperate in the turn over of the Collateral to CDF, or alternatively providing adequate protection, (2) prohibiting Debtors from using and requiring Debtors to immediately turn over any cash collateral derived from the

Collateral to CDF, (3) providing that the provisions of Federal Rule of Bankruptcy Procedure 4001(a)(3) be waived, and (4) dismissing or converting Debtors' cases; and

B. For such other and further relief as the Court may deem appropriate.

Dated: January 26, 2011

Respectfully submitted,

HILL WARD HENDERSON

By: /s/ Michael P. Brundage
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*Counsel for GE Commercial Distribution Finance
Corporation*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via electronic CM/ECF filing this 26th day of January, 2011, to the following:

Gary J. Rotella, Esq.
1500 N Federal Hwy #250
Fort Lauderdale, FL 33304
rotellagar@aol.com

Office of the US Trustee
51 S.W. 1st Ave.
Suite 1204
Miami, FL 33130
USTPRegion21.MM.ECF@usdoj.gov

Kevin C. Gleason, Esq.
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D Aun E Clark, Esq.
1000 S Pine Island Rd # 300
Plantation, FL 33324
daun.clark@irsounsel.treas.gov

and via U.S. mail, postage prepaid this 26th day of January, to the following:

Scooter Super Store of America, Inc.
2455 E. Sunrise Blvd. PHN
Fort Lauderdale, FL 33304

Scooter Super Store of America –
Midtown, LLC
2455 E. Sunrise Blvd. PHN
Fort Lauderdale, FL 33304

By: /s/ Michael P. Brundage

EXHIBIT A

INVENTORY FINANCING AGREEMENT

This Inventory Financing Agreement (as from time to time amended and together with any Transaction Statements, as hereinafter defined, "Agreement") is between GE Commercial Distribution Finance Corporation ("GDF"), with its chief executive office and principal place of business, at 5595 Trillium Boulevard, Hoffman Estates, Illinois 60192 and Scotter Superstore of America, Inc., 2300 N. 23rd Avenue, Hollywood, FL 33020, a Florida Corporation ("Dealer").

1. **Extensions of Credit.** Subject to the terms of this Agreement, GDF may extend credit to or on behalf of Dealer from time to time to enable Dealer to purchase inventory from GDF-approved vendors ("Vendors") and for other purposes. GDF's decision to advance funds is discretionary on GDF's part. GDF may combine all of GDF's advances to Dealer or on Dealer's behalf, whether under this Agreement or any other agreement, and whether provided by one or more of GDF's branch offices, together with all finance charges, fees and expenses related thereto, to make one debt owed by Dealer. Without limiting the discretionary nature of this credit facility, GDF may, without notice to Dealer, elect not to finance any Inventory sold by particular Vendors who are in default to GDF, or with respect to which GDF reasonably feels insecure. This Agreement concerns the extension of credit, and not the provision of goods or services.

2. **Financing Terms.** Certain financial terms of any advance which GDF makes under this Agreement are not set forth herein because such terms depend, in part, on various factors, including without limitation, the availability of Vendor discounts, payment terms or other incentives, GDF's floorplanning volume with Dealer and Vendor and other economic factors which vary from time to time. Therefore, GDF and Dealer agree to set forth in this Agreement only the general terms of Dealer's financing arrangement with GDF. Upon agreeing to finance an item of inventory for Dealer, GDF will transmit or otherwise send to Dealer a "Transaction Statement" which is a record that may be authenticated and transmitted by GDF to Dealer from time to time which identifies the Collateral financed and/or the advance made and the terms and conditions of repayment of such advance. Dealer agrees that Dealer's failure to notify GDF in writing of any objection to a Transaction Statement within thirty (30) days after a Transaction Statement is transmitted or otherwise sent to Dealer shall constitute Dealer's (a) acceptance of all terms thereof, (b) agreement that GDF is financing such inventory at Dealer's request, and (c) agreement that such Transaction Statement will be incorporated herein by reference. If Dealer objects to the terms of any Transaction Statement, Dealer will pay GDF for such inventory in accordance with the most recent terms for similar inventory to which Dealer has not objected (or, if there are no prior terms, at the lesser of 16% per annum or at the maximum lawful contract rate of interest permitted under applicable law), subject to termination of this Agreement by GDF and its rights under the termination provision contained herein. With respect to any advance GDF makes to a Vendor on behalf of Dealer, GDF may apply against any such amount owed to Vendor any amount GDF is owed from such Vendor with respect to Free Floor Periods (each a "GDF Credit") or any other amounts. Notwithstanding the foregoing, Dealer agrees to pay the full amount reflected on any Transaction Statement.

3. **Security Interest.**

(a) Dealer hereby grants to GDF a security interest in all of the Collateral as security for all Obligations.

(b) "Collateral" means all personal property of Dealer, whether such property or Dealer's right, title or interest therein or thereto is now owned or existing or hereafter acquired or arising, and wherever located, including without limitation, all Accounts, Inventory, Equipment, Fixtures, other Goods, General Intangibles (including without limitation, Payment Intangibles), Chattel Paper (whether tangible or electronic), Instruments (including without limitation, Promissory Notes), Deposit Accounts, Investment Property and Documents and all Products and Proceeds of the foregoing. Without limiting the foregoing, the Collateral includes Dealer's right to all Vendor Credits (as defined below). Similarly, the Collateral includes, without limitation, all books and records, electronic or otherwise, which evidence or otherwise relate to any of the foregoing property, and all computers, disks, tapes, media and other devices in which such records are stored. For purposes of this Section 3 only, capitalized terms used in this Section 3, which are not otherwise defined, shall have the meanings given to them in Article 9 of the Illinois Uniform Commercial Code.

(c) "Obligations" means all indebtedness and other obligations of any nature whatsoever of Dealer to GDF and/or to any person that at any time directly or indirectly controls, is controlled by, or is under common control with GDF (a "GDF Affiliate"), whether such indebtedness or other obligations arise under this Agreement or any other existing or future agreement between or among Dealer, GDF and/or a GDF Affiliate or otherwise, and whether for principal, interest, fees, expenses, indemnification obligations or otherwise, and whether such indebtedness or other obligations are existing, future, direct, indirect, acquired, contractual, noncontractual, joint and/or several, fixed, contingent or otherwise.

(d) "Vendor Credits" means all of Dealer's rights to any price protection payments, rebates, discounts, credits, factory holdbacks, incentive payments and other amounts which at any time are due Dealer from a Vendor.

4. **Representations and Warranties.** Dealer represents and warrants that at the time of execution of this Agreement and at the time of each approval and each advance hereunder: (a) Dealer is in good standing, does not conduct business under any trade styles or trade names except as disclosed by the Dealer to GDF in writing and has all the necessary authority to enter into and perform this Agreement and Dealer will not violate its organizational documents, or any law, regulation or agreement binding upon it, by entering into or performing its obligations under this Agreement; (b) Dealer keeps its records respecting accounts and chattel paper at its chief executive office identified below, and the only locations at which Collateral is located have been or will be disclosed by the Dealer to GDF in writing prior to the execution of this Agreement (together with additional locations of Dealer in the United States with respect to which Dealer gives GDF at least thirty (30) days

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prior written notice, "Permitted Locations"); (c) this Agreement correctly sets forth Dealer's true legal name, the type of its organization (if not an individual), the state in which Dealer is incorporated or otherwise organized, and Dealer's organizational identification number, if any; (d) all information supplied by Dealer to CDF, including any financial, credit or accounting statements or application for credit, in connection with this Agreement is true, correct and complete; (e) all advances and other transactions hereunder are for business purposes and not for personal, family, household or any other consumer purposes; (f) Dealer has good title to all Collateral; (g) there are no actions or proceedings pending or threatened against Dealer which might result in any material adverse change in Dealer's financial or business condition; and (h) when requested by CDF, Dealer will provide CDF with a copy of Dealer's organizational documents, and will provide any subsequent amendments thereto bearing indicia of filing from the appropriate governmental authority, or such other documents verifying Dealer's true and correct legal name as CDF may request from time to time.

5. Covenants.

(a) Until sold as permitted by this Agreement, Dealer shall own all Collateral financed by CDF free and clear of all liens, security interests, claims and other encumbrances, whether arising by agreement or operation of law (collectively "Liens"), other than Liens in favor of CDF and subordinate Liens in favor of other persons with respect to which CDF shall have first consented in writing.

(b) Dealer will: (1) keep all Collateral at Permitted Locations and keep all tangible Collateral in good order, repair and operating condition and insured as required herein; (2) promptly file all tax returns required by law and promptly pay all taxes, fees, and other governmental charges for which it is liable, including without limitation all governmental charges against the Collateral or this Agreement; (3) permit CDF and its designees, without notice, to inspect the Collateral during normal business hours and at any other time CDF deems desirable (and Dealer hereby grants CDF and its designees an irrevocable license to enter Dealer's business locations during normal business hours without notice to Dealer to account for and inspect all Collateral and to examine and copy Dealer's books and records related to the Collateral), and in connection with any inspection, provide CDF and its designees safe and secure access to the Collateral and comply with any request made by CDF or its designees to move the Collateral in order to provide such safe and secure access; (4) keep complete and accurate records of its business, including inventory, accounts and sales, and permit CDF and its designees to inspect and copy such records upon request; (5) furnish CDF with such additional information regarding the Collateral and Dealer's business and financial condition as CDF may from time to time reasonably request (including without limitation financial statements and projections more frequently than set forth below); (6) immediately notify CDF of any material adverse change in Dealer's prospects, business, operations or condition (financial or otherwise) or in any Collateral; (7) execute (or cause any third party in possession of Collateral to execute) all documents CDF requests to perfect and maintain CDF's security interest in the Collateral; (8) deliver to CDF immediately upon each request by CDF (and CDF may retain) each certificate of title or statement of origin issued for Collateral financed by CDF; (9) at all times be duly organized, existing, in good standing, qualified and licensed to do business in each jurisdiction in which the nature of its business or property so requires; (10) notify CDF of the commencement of any material legal proceedings against Dealer or any Guarantor (as defined below); and (11) comply with all laws, rules and regulations applicable to Dealer, including without limitation, the USA PATRIOT ACT and all laws, rules and regulations relating to import or export controls or anti-money laundering.

(c) Dealer will not without CDF's prior written consent: (1) use (except for demonstration for sale), rent, lease, sell, transfer, consign, license, encumber or otherwise dispose of Collateral except for sales of inventory at retail in the ordinary course of Dealer's business; (2) sell or otherwise transfer inventory to a Dealer Affiliate (as defined below); (3) engage in any other material transaction not in the ordinary course of Dealer's business; (4) change its business in any material manner or its structure or be a party to a merger or consolidation or change its registration to a registered organization other than as specified above; (5) change its name or conduct business under a trade style or trade name other than those disclosed by the Dealer to CDF in writing without giving CDF at least thirty (30) days' prior written notice hereof; (6) change its chief executive office or office where it keeps its records with respect to accounts or chattel paper; (7) change the state in which it is incorporated or otherwise organized (except upon thirty (30) days' prior written notice to CDF); (8) finance on a secured basis with any Vendor or any third party the acquisition of inventory of the same brand as any inventory financed or to be financed by CDF; or (9) store Collateral financed by CDF with any third party. For purposes of this Agreement, a "Dealer Affiliate" means any person that: (i) directly or indirectly controls, is controlled by or is under common control with Dealer, (ii) directly or indirectly owns 5% or more of Dealer, (iii) is a director, partner, manager, or officer of Dealer or an affiliate of Dealer, or (iv) any natural person related to Dealer or an affiliate of Dealer.

6. Insurance.

(a) All risk of loss, damage to or destruction of Collateral shall at all times be on Dealer. Dealer shall keep tangible Collateral insured for full value against all insurable risks under policies delivered to CDF and issued by insurers satisfactory to CDF with loss payable to CDF and at CDF's request under long-form mortgage endorsements as its interest may appear subject to cancellation or change only (i) upon ten (10) days written notice to CDF for non-payment of premium or (ii) upon thirty (30) days written notice to CDF for all other reasons. CDF is authorized, but not required, to act as attorney-in-fact for Dealer in adjusting and settling any insurance claims under any such policy and in endorsing any checks or drafts drawn by insurers. Dealer shall promptly remit to CDF in the form received, with all necessary endorsements, all proceeds of such insurance which Dealer may receive. CDF, at its election, shall either apply any proceeds of insurance it may receive toward payment of the obligations or pay such proceeds to Dealer.

(b) The following notice is given pursuant to Section 180/15 of the Collateral Protection Act set forth in Chapter 815 Section 180/1 of the Illinois Compiled Statutes; nothing contained in such notice shall be deemed to limit or modify the terms of this Agreement: **UNLESS DEALER PROVIDES EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY DEALER'S AGREEMENT WITH CDF, CDF MAY PURCHASE INSURANCE AT DEALER'S EXPENSE TO PROTECT CDF'S INTEREST**

IN DEALER'S COLLATERAL. THIS INSURANCE MAY, BUT NEED NOT, PROTECT DEALER'S INTEREST. THE COVERAGE THAT CDF PURCHASES MAY NOT PAY ANY CLAIM THAT DEALER MAKES OR ANY CLAIM THAT IS MADE AGAINST DEALER IN CONNECTION WITH THE COLLATERAL. DEALER MAY LATER CANCEL ANY INSURANCE PURCHASED BY CDF, BUT ONLY AFTER PROVIDING CDF EVIDENCE THAT DEALER HAS OBTAINED INSURANCE AS REQUIRED UNDER THIS AGREEMENT. IF CDF PURCHASES INSURANCE FOR THE COLLATERAL, DEALER WILL BE RESPONSIBLE FOR THE COSTS OF THAT INSURANCE, INCLUDING THE INSURANCE PREMIUM, INTEREST AND ANY OTHER CHARGES CDF MAY IMPOSE IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE, UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE MAY BE ADDED TO DEALER'S TOTAL OUTSTANDING BALANCE OR OBLIGATION. THE COSTS OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE DEALER MAY BE ABLE TO OBTAIN ON ITS OWN.

7. **Financial Statements.** Unless waived by CDF, Dealer will deliver to CDF, in a form satisfactory to CDF: (a) Dealer's year-end balance sheet and annual profit and loss statement for each of its fiscal years, within twenty (20) days after the same are prepared but in no event later than one hundred and twenty (120) days after the end of each fiscal year; (b) within forty-five (45) days after the end of Dealer's fiscal quarter, a reasonably detailed balance sheet and income statement as of the last day of such quarter covering Dealer's operations for such quarter; and (c) within ten (10) days after CDF's request, any other information relating to the Collateral or the financial condition of Dealer or any Guarantor. Dealer represents that all financial statements and information which have been or may hereafter be delivered by Dealer or any Guarantor are and will be correct and prepared in accordance with generally accepted accounting principles consistently applied, and there has been no material adverse change in the financial or business condition of Dealer or any Guarantor since the submission to CDF of such financial statements, and Dealer acknowledges CDF's reliance thereon.

8. **Payment Terms.** Dealer will immediately pay CDF the principal amount of the obligations owed CDF on each item of Collateral financed by CDF on the earliest occurrence of any of the following events: (a) when such Collateral is lost, stolen or damaged; (b) for Collateral financed under any pay-as-sold ("PAS") terms, when such Collateral is sold, transferred, rented, leased, otherwise disposed of, or its payment term has matured; (c) for Collateral financed under any scheduled payment program ("SPP") terms, in strict accordance with the installment payment schedule; (d) in strict accordance with any curtailment schedule for such Collateral; and (e) when otherwise required under the terms of this Agreement. The PAS, SPP and curtailment terms are or may be set forth in a Transaction Statement. If Dealer is required to make immediate payment to CDF of any past due obligation discovered during any Collateral review, or at any other time, CDF's acceptance of such payment shall not be construed to have waived or amended the terms of its financing program. Dealer will send all payments to CDF as directed. CDF may apply: (1) payments to reduce finance charges first and then principal, regardless of Dealer's instructions; and (2) principal payments to the oldest (earliest) invoice for Collateral financed by CDF, but, in any event, all principal payments, may, in CDF's sole discretion, first be applied to such Collateral which is sold, lost, stolen, damaged, rented, leased, or otherwise disposed of or unaccounted for. Any Vendor Credit granted to Dealer for any Collateral will not reduce the obligations Dealer owes CDF until CDF has received payment therefor in cash. Dealer will: (A) pay CDF even if any Collateral is defective or fails to conform to any warranties extended by any third party; and (B) indemnify and hold CDF harmless against all claims and defenses asserted by any buyer of any Collateral. Dealer waives all rights of setoff Dealer may have against CDF. Any payment hereunder which would otherwise be due on a day which is not a Business Day, shall be due on the next succeeding Business Day, with such extension of time included in any calculation of applicable finance charges. Any advances which are not used to acquire inventory, as contemplated hereby, shall be paid on demand unless otherwise provided in this Agreement or in any Transaction Statement. In order to adequately secure Dealer's obligations to CDF, Dealer shall, at CDF's request, immediately pay CDF the amount necessary to reduce the sum of CDF's outstanding advances with respect to inventory received by Dealer to an amount which does not exceed the aggregate invoice price to Dealer of the inventory in Dealer's possession which (i) is financed by CDF, and (ii) in which CDF has a perfected first priority lien. For purposes of this Agreement, "Business Day" means any day the Federal Reserve Bank of Chicago is open for the transaction of business.

9. **Calculation of Charges.**

(a) Dealer shall pay fees, charges and interest (collectively, "Charges") with respect to each advance in accordance with the Agreement. Dealer shall pay CDF its customary Charge for any check or other item which is returned unpaid to CDF. Unless otherwise provided in the Agreement, the following additional provisions shall be applicable to Charges: (i) any reference to "Prime Rate" shall mean for any calendar month the highest "prime rate" published in the "Money Rates" column of the Wall Street Journal on the first Business Day of such month; (ii) all Charges shall be paid by Dealer monthly pursuant to the terms of the billing statement in which such Charges appear; (iii) interest on each advance and principal amount of the obligations related thereto shall be computed each calendar month on the sum of the daily balances thereof during such month divided by thirty (30) and (A) in the case where a monthly rate of interest is provided for, multiplied by the monthly rate provided for in the Agreement; or (B) in the case where an annual rate of interest is provided for, multiplied by one-twelfth of the annual rate provided for in the Agreement; or (C) in the case where a daily rate of interest is provided for, multiplied by such daily rate and multiplied by thirty (30); (iv) interest on an advance shall begin to accrue on the Start Date which shall be defined as the earlier of: (A) the invoice date referred to in the Vendor's invoice; or (B) the ship date referred to in the Vendor's invoice; or (C) the date CDF makes such advance; provided, however, if a Vendor fails to fully pay, by honoring or paying any CDF Credit or otherwise, the interest or other cost of financing such inventory during the period between the Start Date and the end of the Free Floor Period (as defined below), then Dealer shall pay such interest to CDF on demand as if there were no Free Floor Period with respect to such inventory; (v) for the purpose of computing Charges, any payment will be credited pursuant to CDF's payment recognition policy, as in effect from time to time; and (vi) advances or any part thereof not paid when due (and

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Charges not paid when due, at the option of CDF, shall become part of the principal amount of the Obligations and shall bear interest at the Default Rate (as defined below). For purposes of this Agreement, the following definitions shall apply: "Default Rate" shall mean the default rate specified in Dealer's financing program with CDF, if any, or if there is none so specified, at the lesser of 3% per annum above the rate in effect immediately prior to the Default, or the highest lawful contract rate of interest permitted under applicable law; "Free Floor Period" shall mean a period equal to the number of days during which a Vendor agrees to assume the cost of financing collateral purchased by Dealer by granting CDF a CDF Credit.

(b) CDF intends to strictly conform to the usury laws governing this Agreement. Regardless of any provision contained herein, in any Transaction Statement, or in any other document, CDF shall never be deemed to have contracted for, charged or be entitled to receive, collect or apply as interest, any amount in excess of the maximum amount allowed by applicable law. If CDF ever receives any amount which, if considered to be interest, would exceed the maximum amount permitted by law, CDF will apply such excess amount to the reduction of the unpaid principal balance which Dealer owes, and then will pay any remaining excess to Dealer. In determining whether the interest paid or payable exceeds the highest lawful rate, Dealer and CDF shall, to the maximum extent permitted under applicable law, (1) characterize any non-principal payment (other than payments which are expressly designated as interest payments hereunder) as an expense or fee rather than as interest; (2) exclude voluntary pre-payments and the effect thereof, and (3) spread the total amount of interest throughout the entire term of this Agreement so that the interest rate is uniform throughout such term. CDF will recognize and credit payments made by check, ACH, federal wire, or other means, according to its payment recognition policies from time to time in effect, or as otherwise agreed. Information regarding CDF payment recognition policies is available from Dealer's CDF representative, the CDF website, or will be communicated pursuant to Section 10(b) below.

(c) Dealer may receive a record which is or contains a Self-Certification Floorcheck ("SCF") at the beginning of certain months reflecting unpaid advances through the last day of the preceding month. If Dealer receives an SCF, Dealer must complete it and return it to CDF by the 15th day of the same month in which it was received by Dealer, along with all payments due CDF under this Agreement. If CDF does not receive the completed SCF and all payments due by the 25th day of the month in which the SCF was received by Dealer, Dealer will pay CDF a self-certification fee as may be announced from time to time for such month in addition to all other amounts owed. The cost of any collateral inspection occasioned by a default or otherwise out of the ordinary course of business may be added to the Obligations at CDF's discretion.

10. Billing Statement/Fees; Right to Modify Charges and Other Terms.

(a) CDF will transmit or otherwise send Dealer a monthly billing statement identifying all charges due on Dealer's account with CDF. The charges specified on each billing statement will be (1) due and payable in full immediately on receipt, and (2) an account stated, unless CDF receives Dealer's written objection thereto within fifteen (15) days after it is transmitted or otherwise sent to Dealer. If CDF does not receive, by the 25th day of any given month, payment of all charges accrued to Dealer's account with CDF during the immediately preceding month, Dealer will (to the extent allowed by law) pay CDF a late fee equal to the greater of \$5 or 5% of the amount of such charges (payment of such fee does not waive the default caused by the late payment). CDF may adjust the billing statement at any time to conform to applicable law and this Agreement.

(b) CDF may charge one or more fees in connection with the servicing and administration of Dealer's account. From time to time, CDF may provide written notice to Dealer of new or changed fees, interest and/or other finance charges (including without limitation, increases or decreases in the periodic rate or amount of finance charges, the method of computing finance charges and when and how finance charges, and principal payments, are payable), policies, practices and other charges and/or credit terms (collectively, "Fees and Terms") payable by, or applicable to, Dealer or relating to Dealer's account generally, or in connection with specific services, or events, to be effective as of the notice date, or such other future effective date as CDF shall advise, with respect to existing Obligations owing by Dealer to CDF and/or to Obligations incurred or arising after such notice or future effective date, as the case may be, all as CDF may elect by so indicating in such notice. Such notice may be delivered by mail, courier or electronically in a separate writing or website posting, or set forth in the Transaction Statement and/or the billing statement. Dealer shall be deemed to have accepted such Fees and Terms by either (1) making any request for financing after the effective date of such notice, or (2) failing to notify CDF in writing of any objection to a Transaction Statement, billing statement or written notice advising of such Fees and Terms within fifteen (15) days after such notice has been sent to Dealer. If Dealer objects to the Fees and Terms, such Fees and Terms shall not be imposed, but CDF may charge or implement the last Fees and Terms to which Dealer has not objected, and may elect to terminate Dealer's financing program.

11. **Default.** The occurrence of one or more of the following events shall constitute a default by Dealer (a "Default"): (a) Dealer shall fail to pay any Obligations when due or any remittance for any Obligations is dishonored when first presented for payment; (b) any representation made to GDF by Dealer or by any guarantor, surety, issuer of a letter of credit or any person other than Dealer primarily or secondarily liable with respect to any Obligations (a "Guarantor") shall not be true when made or if Dealer or any Guarantor shall breach any covenant, warranty or agreement to or with GDF; (c) Dealer (including, if Dealer is a partnership or limited liability company, any partner or member of Dealer) or any Guarantor shall die, become insolvent or generally fail to pay its debts as they become due or, if a business, shall cease to do business as a going concern; (d) any letter of credit or other form of collateral provided by Dealer or a Guarantor to GDF with respect to any Obligations or Collateral shall terminate or not be renewed at least sixty (60) days prior to its stated expiration or maturity; (e) Dealer abandons any Collateral; (f) any Guarantor shall revoke, terminate or limit, or take any action purporting to revoke, terminate or limit, any guaranty or other assurance of payment relating to any Obligations; (g) Dealer or any Guarantor shall make an assignment for the benefit of creditors, or commence a proceeding with respect to itself under any bankruptcy, reorganization, arrangement, insolvency, receivership, dissolution or liquidation statute or similar law of any jurisdiction, or any such proceeding shall be commenced against it or any of its property (an "Automatic Default"); (h) an attachment, sale or seizure shall be issued or shall be executed against any assets of Dealer or of any Guarantor; (i) Dealer shall lose, or shall be in default of, any franchise, license or right to deal in any Collateral which GDF finances; (j) Dealer, Guarantor or any third party shall file any correction or termination statement with respect to any Uniform Commercial Code (the "UCC") filing made by GDF in connection herewith; (k) a material adverse change shall occur in the business, operations or condition (financial or otherwise) of Dealer (including, if Dealer is a partnership or limited liability company, any partner or member of Dealer) or any Guarantor or with respect to the Collateral; (l) Dealer or any Guarantor fails to pay any debt or perform any other obligation owed to any third party; (m) Dealer or any Guarantor defaults under the terms of any agreement with any GDF Affiliate; or (n) GDF in good faith believes the prospect of payment of any Obligations is impaired or GDF deems itself insecure.

12. **Rights and Remedies Upon Default.** Upon the occurrence of a Default, GDF shall have all rights and remedies of a secured party under the UCC as in effect in any applicable jurisdiction and other applicable law and all the rights and remedies set forth in this Agreement. GDF may terminate any obligations it has under this Agreement and any outstanding credit approvals immediately and/or declare any and all Obligations immediately due and payable without notice or demand. Dealer waives notice of intent to accelerate, and of acceleration of any Obligations. GDF may enter any premises of Dealer, with or without process of law, without force, to search for, take possession of, and remove the Collateral, or any part thereof. If GDF requests, Dealer shall cease disposition of and shall assemble the Collateral and make it available to GDF, at Dealer's expense, at a convenient place or places designated by GDF. GDF may take possession of the Collateral or any part thereof on Dealer's premises and cause it to remain there at Dealer's expense, pending sale or other disposition. Dealer agrees that the sale of inventory by GDF to a person who is liable to GDF under a guaranty, endorsement, repurchase agreement or the like shall not be deemed to be a transfer subject to UCC §9-618 or any similar provision of any other applicable law, and Dealer waives any provision of such laws to that effect. Dealer agrees that the repurchase of inventory by a Vendor pursuant to a repurchase agreement with GDF shall be a commercially reasonable method of disposition. Dealer shall be liable to GDF for any delinquency resulting from GDF's disposition, including without limitation a repurchase by a Vendor, regardless of any subsequent disposition thereof. Dealer is not a beneficiary of, and has no right to require GDF to enforce, any repurchase agreement. Any notice of a disposition shall be deemed reasonably and properly given if given to Dealer at least ten (10) days before such disposition. If Dealer fails to perform any of its obligations under this Agreement, GDF may perform the same in any form or manner GDF in its discretion deems necessary or desirable, and all monies paid by GDF in connection therewith shall be additional Obligations and shall be immediately due and payable without notice together with interest payable on demand at the Default Rate. All of GDF's rights and remedies shall be cumulative. At GDF's request, or without request in the event of an Automatic Default, Dealer shall pay all Vendor Credits to GDF as soon as the same are received for application to the Obligations. Dealer authorizes GDF to collect such amounts directly from Vendors and, upon request of GDF, shall instruct Vendors to pay GDF directly. Dealer irrevocably waives any requirement that GDF retain possession and not dispose of any Collateral until after an arbitration hearing, arbitration award, confirmation, trial or final judgment or appeal thereof. GDF's election to extend or not extend credit to Dealer is solely at GDF's discretion and does not depend on the absence or existence of a Default. If a Default is in effect, and without regard to whether GDF has accelerated any Obligations, GDF may, without notice, apply the Default Rate.

13. **Power of Attorney.** Dealer authorizes GDF to: (a) file financing statements describing GDF as "Secured Party," Dealer as "Debtor" and indicating the Collateral; (b) authenticate, execute or endorse on behalf of Dealer any instruments, chattel paper, certificates of title, manufacturer statements of origin, builder's certificate, financing statements and amendments thereto, or other notices or records comprising or related to Collateral or evidencing financing under the Agreement or evidencing or maintaining the perfection of the security interest granted hereby, as attorney-in-fact for Dealer; and (c) supply any omitted information and correct errors in any documents between GDF and Dealer. This power of attorney and the other powers of attorney granted herein are irrevocable and coupled with an interest.

14. Collection and Other Costs. Dealer shall pay to CDF on demand all reasonable attorneys' fees and legal expenses and other costs and expenses incurred by CDF in connection with establishing, perfecting, maintaining perfection of, protecting and enforcing its Lien on the Collateral and collecting any Obligations, or in connection with any modification of this Agreement, any Default or in connection with any action or proceeding under any bankruptcy or insolvency laws or incurred pursuant to an arbitration proceeding involving the Dealer, any Guarantor or any Collateral. All fees, expenses, costs and other amounts described in this Section shall constitute Obligations, shall be secured by the Collateral and interest shall accrue thereon at the Default Rate.

15. Dealer Irrevocably authorizes CDF to investigate and make inquiries of former, current, or future creditors or other persons and credit bureaus regarding or relating to Dealer (including, to the extent permitted by law, any equity holders of Dealer). CDF may provide to any CDF Affiliate or any third parties any financial, credit or other information regarding Dealer that CDF may at any time possess, whether such information was supplied by Dealer to CDF or otherwise obtained by CDF. Further, Dealer Irrevocably authorizes and instructs any third parties (including without limitation, any Vendors or customers of Dealer) to provide to CDF any credit, financial or other information regarding Dealer that such third parties may at any time possess, whether such information was supplied by Dealer to such third parties or otherwise obtained by such third parties.

16. Dealer's Claims Against Vendors. Dealer will not assert against CDF any claim or defense Dealer may have against any Vendor whether for breach of contract, warranty, misrepresentation, failure to ship, lack of authority, or otherwise, including without limitation claims or defenses based upon charge backs, credit memos, rebates, price protection payments or returns. Any such claims or defenses or other claims or defenses Dealer may have against a Vendor shall not affect Dealer's liabilities or obligations to CDF.

17. Termination. Unless sooner terminated as provided in this Agreement or by at least thirty (30) days prior written notice from either party to the other, the term of this Agreement shall be for one (1) year from the date hereof and from year to year thereafter; provided, however, that CDF may terminate the Agreement immediately by notice to Dealer if Dealer objects to any terms of any Transaction Statement, billing statement or written notice advising of Fees and Terms. Upon termination of the Agreement, all Obligations shall become immediately due and payable without notice or demand. Upon any termination, Dealer shall remain fully liable to CDF for all Obligations, including without limitation all fees, expenses and charges, arising prior to or after termination, and all of CDF's rights and remedies and its security interest shall continue until all Obligations to CDF are paid and all obligations of Dealer are performed in full. If CDF makes advances in reliance on a repurchase agreement from a Vendor, it may cease making such advances if it has any concern as to whether such repurchase agreement will cover future advances or be performed by such Vendor. No provision of the Agreement shall be construed to obligate CDF to make any advances. All waivers and indemnifications in CDF's favor, and the agreement to arbitrate, set forth in this Agreement will survive any termination of this Agreement.

18. Binding Effect. Dealer cannot assign its interest in this Agreement without CDF's prior written consent. CDF may assign or participate CDF's interest, in whole or in part, without Dealer's consent. This Agreement will protect and bind CDF's and Dealer's respective heirs, representatives, successors and assigns, as the case may be.

19. Notices. Except as required by law or as otherwise provided herein, all notices or other communications to be given under the Agreement or under the UCC shall be in writing served either personally, by deposit with a reputable overnight courier with charges prepaid, or by deposit in the United States mail, first-class postage prepaid or provided for, addressed to Dealer at its chief executive office shown below or to any office to which CDF sends billing statements, or to CDF at its address shown in the preamble hereto, to the attention of its Credit Department, or at such other address designated by such party by notice to the other. Any such communication shall be deemed to have been given upon delivery in the case of personal delivery, one Business Day after deposit with an overnight courier or two (2) calendar days after deposit in the United States mail except that any notice of change of address shall not be effective until actually received.

20. Severability. If any provision of this Agreement or its application is invalid or unenforceable, the remainder of this Agreement will not be impaired or affected and will remain binding and enforceable.

21. Supplement. If Dealer and CDF have previously executed other agreements pertaining to all or any part of the Collateral, this Agreement will supplement, but not amend, such agreement, and this Agreement will neither be deemed a novation nor a termination of such agreement, nor will execution of this Agreement be deemed a satisfaction of any obligation secured by such agreement.

22. Receipt of Agreement. Dealer acknowledges that it has received a true and complete copy of this Agreement. Dealer has read and understands this Agreement. Notwithstanding anything herein to the contrary, CDF may rely on any facsimile copy, electronic data transmission, or electronic data storage of this Agreement, any Transaction Statement, billing statement, financing statement, authorization to pre-file financing statements, invoice from a Vendor, financial statements or other reports, which will be deemed an original, and the best evidence thereof for all purposes.

23. Acceptance by CDF. CDF may accept this Agreement by issuance of an approval to a Vendor for the purchase of inventory by Dealer or by making an advance hereunder.

24. Miscellaneous. Time is of the essence regarding Dealer's performance of its obligations to CDF. Dealer's liability to CDF is direct and unconditional and will not be affected by the release or nonperfection of any security interest granted hereunder. CDF may refrain from or postpone enforcement of this Agreement or any other agreements between CDF and Dealer without prejudice, and the failure to strictly enforce these agreements will not create a course of dealing which waives, amends or modifies such agreements. Any waiver by CDF of a Default shall only be effective if in writing signed by CDF and transmitted to Dealer. The express terms of this Agreement will not be modified by any course of dealing, usage of trade, or custom of trade which may deviate from the terms hereof. If Dealer fails to pay any taxes, fees or other obligations which may impair CDF's interest in the Collateral, or fails to keep any Collateral insured, CDF may, but shall not be required to, pay such amounts. Such paid amounts will be: (a) additional Obligations which Dealer owes to CDF, which are subject to finance charges as provided herein and shall be secured by the Collateral; and (b) due and payable immediately in full. Section titles used herein are for convenience only, and do not define or limit the contents of any Section. All words used herein shall be understood and construed to be of such number and gender as the circumstances may require. This Agreement may be validly executed in one or more multiple counterpart signature pages. This Agreement shall be construed without presumption for or against any party who drafted all or any portion of this Agreement. No modification of this Agreement shall bind CDF unless in a writing signed by CDF and transmitted to Dealer. Among other symbols, CDF hereby adopts "GE Commercial Distribution Finance Corporation," "GE Commercial Distribution Finance," "GECDF" or "CDF" as evidence of its intent to authenticate a record.

25. Limitation of Remedies and Damages. In the event there is any dispute under this Agreement, the aggrieved party shall not be entitled to exemplary or punitive damages so that the aggrieved party's remedy in connection with any action arising under or in any way related to this Agreement shall be limited to a breach of contract action and any damages in connection therewith are limited to actual and direct damages, except that CDF may seek equitable relief in connection with any judicial repossession of, or temporary restraining order with respect to, the Collateral.

26. BINDING ARBITRATION.

(a) **Arbitrable Claims.** Except as otherwise specified below, all actions, disputes, claims and controversies under common law, statutory law or in equity of any type or nature whatsoever, whether arising before or after the date of this Agreement, and whether directly or indirectly relating to: (a) this Agreement and/or any amendments and addenda hereto, or the breach, invalidity or termination hereof; (b) any previous or subsequent agreement between CDF and Dealer; (c) any act committed by CDF or by any parent company, subsidiary or affiliated company of CDF (the "CDF Companies"), or by any employee, agent, officer or director of a CDF Company whether or not arising within the scope and course of employment or other contractual representation of the CDF Companies provided that such act arises under a relationship, transaction or dealing between CDF and Dealer; and/or (d) any other relationship, transaction or dealing between CDF and Dealer (collectively the "Disputes"), will be subject to and resolved by binding arbitration. Notwithstanding the foregoing, the parties agree that either party may pursue claims against the other that do not exceed Fifteen Thousand Dollars (\$15,000) in the aggregate in a court of competent jurisdiction. Service of arbitration claims shall be acceptable if made by U.S. mail or overnight delivery to the address for the party described herein.

(b) **Administrative Body.** All arbitration hereunder will be conducted in accordance with the Commercial Arbitration Rules of either: (a) The American Arbitration Association ("AAA"); or (b) United States Arbitration & Mediation ("USA&M"). The party first filing an arbitration claim shall designate which arbitration forum and rules are to be applied for all disputes between the parties. The arbitration rules are currently found at www.adr.org for AAA, and at www.usam-midwest.com for USA&M. AAA claims may be filed in any AAA office. Claims filed with USA&M shall be filed in its Midwest office located at 720 Olive Street, Suite 2020, St. Louis, Missouri 63101. All arbitrator(s) selected will be attorneys with at least five (5) years secured transactions experience. A panel of three arbitrators shall hear all claims exceeding One Million Dollars (\$1,000,000), exclusive of interest, costs and attorneys' fees. The arbitrator(s) will decide if any inconsistency exists between the rules of the applicable arbitral forum and the arbitration provisions contained herein. If such inconsistency exists, the arbitration provisions contained herein will control and supersede such rules. The arbitrator shall follow the terms of this Agreement and the applicable law, including without limitation, the attorney-client privilege and the attorney work product doctrine.

(c) **Hearings.** Each party hereby consents to a documentary hearing for all arbitration claims by submitting the dispute to the arbitrator(s) by written briefs and affidavits, along with relevant documents. However, arbitration claims will be submitted by way of an oral hearing if any party requests an oral hearing within forty (40) days after service of the claim and that party remits the appropriate deposit for fees and arbitrator compensation within ten (10) days of making the request. Each party agrees that failure to timely pay all fees and arbitrator compensation billed to the party requesting the oral hearing will be deemed such party's consent to submitting the Dispute to the arbitrator on documents and such party's waiver of its request for an oral hearing. The site of all oral arbitration hearings will be in the Division of the Federal Judicial District in which the designated arbitration association maintains a regional office that is closest to Dealer.

(d) **Discovery.** Discovery permitted in any arbitration proceeding commenced hereunder is limited as follows. No later than forty (40) days after the filing and service of a claim for arbitration, the parties in contested cases will exchange detailed statements setting forth the facts supporting the claim(s) and all defenses to be raised during the arbitration, and a list of all exhibits and witnesses. No later than twenty-one (21) days prior to the oral arbitration hearing, the parties will exchange a final list of all exhibits and all witnesses, including any designation of any expert witness(es) together with a summary of their testimony; a copy of all documents and a detailed description of any property to be introduced at the hearing. Under no circumstances will the use of interrogatories, requests for admission, requests for the production of documents or the taking of

depositions be permitted. However, in the event of the designation of any expert witness(es), the following will occur: (i) all information and documents relied upon by the expert witness(es) will be delivered to the opposing party; (ii) the opposing party will be permitted to depose the expert witness(es); (iii) the opposing party will be permitted to designate rebuttal expert witness(es); and (iv) the arbitration hearing will be continued to the earliest possible date that enables the foregoing limited discovery to be accomplished.

(e) Exemplary or Punitive Damages. The arbitrator(s) will not have the authority to award exemplary or punitive damages.

(f) Confidentiality of Awards. All arbitration proceedings, including testimony or evidence at hearings, will be kept confidential, although any award or order rendered by the arbitrator(s) pursuant to the terms of this Agreement may be confirmed as a judgment or order in any state or federal court of competent jurisdiction within the federal judicial district which includes the residence of the party against whom such award or order was entered. This Agreement concerns transactions involving commerce among the several states. The Federal Arbitration Act, Title 9 U.S.C. Sections 1 et seq., as amended ("FAA") will govern all arbitration(s) and confirmation proceedings hereunder.

(g) Prejudgment and Provisional Remedies. Nothing herein will be construed to prevent CDF's or Dealer's use of bankruptcy, receivership, injunction, repossession, replevin, claim and delivery, sequestration, seizure, attachment, foreclosure, and/or any other prejudgment or provisional action or remedy relating to any Collateral for any current or future debt owed by either party to the other. Any such action or remedy will not waive CDF's or Dealer's right to compel arbitration of any Dispute.

(h) Attorneys' Fees. If either Dealer or CDF brings any other action for judicial relief with respect to any Dispute (other than those set forth in Sections 26(a) or 26(g)), the party bringing such action will be liable for and immediately pay all of the other party's costs and expenses (including attorneys' fees) incurred to stay or dismiss such action and remove or refer such Dispute to arbitration. If either Dealer or CDF brings or appeals an action to vacate or modify an arbitration award and such party does not prevail, such party will pay all costs and expenses, including attorneys' fees, incurred by the other party in defending such action. Additionally, if Dealer sues CDF or institutes any arbitration claim or counterclaim against CDF in which CDF is the prevailing party, Dealer will pay all costs and expenses (including attorneys' fees) incurred by CDF in the course of defending such action or proceeding.

(i) Limitations. Any arbitration proceeding must be instituted: (a) with respect to any Dispute for the collection of any debt owed by either party to the other, within two (2) years after the date the last payment by or on behalf of the payor was received and applied in respect of such debt by the payee; and (b) with respect to any other Dispute, within two (2) years after the date the incident giving rise thereto occurred, whether or not any damage was sustained or capable of ascertainment or either party knew of such incident. Failure to institute an arbitration proceeding within such period will constitute an absolute bar and waiver to the institution of any proceeding, whether arbitration or a court proceeding, with respect to such Dispute. Notwithstanding the foregoing, this limitations provision will be suspended temporarily as of the date any of the following events occur and will not resume until the date following the date either party is no longer subject to (i) bankruptcy, (ii) receivership, (iii) any proceeding regarding an assignment for the benefit of creditors, or (iv) any legal proceeding, civil or criminal, which prohibits either party from foreclosing any interest it might have in the collateral of the other party.

(j) Survival After Termination. The agreement to arbitrate will survive the termination of this Agreement.

27. Governing Law. This Agreement and all agreements between Dealer and CDF have been substantially negotiated and will be substantially performed in the state of Illinois. Accordingly, all Disputes will be governed by, and construed in accordance with, the laws of such state, except to the extent inconsistent with the provisions of the FAA, which will control and govern all arbitration proceedings hereunder.


28. INVALIDITY/UNENFORCEABILITY OF BINDING ARBITRATION. IF THIS AGREEMENT IS FOUND TO BE NOT SUBJECT TO ARBITRATION, ANY LEGAL PROCEEDING WITH RESPECT TO ANY DISPUTE WILL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE WITHOUT A JURY. DEALER AND CDF WAIVE ANY RIGHT TO A JURY TRIAL IN ANY SUCH PROCEEDING. SIMILARLY, IF THIS AGREEMENT OR A PARTICULAR DISPUTE HEREUNDER IS NOT SUBJECT TO ARBITRATION, DEALER HEREBY CONSENTS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN ILLINOIS AND WAIVES ANY OBJECTION WHICH DEALER MAY HAVE BASED ON IMPROPER VENUE OR FORUM NON CONVENIENS TO THE CONDUCT OF ANY ACTION OR PROCEEDING IN ANY SUCH COURT.

THIS CONTRACT CONTAINS BINDING ARBITRATION, JURY WAIVER AND PUNITIVE DAMAGE WAIVER PROVISIONS.

Dated: August 21, 2007.

DEALER

SCOOTER SUPERSTORE OF AMERICA, INC.

By: 
Print Name: George Peter Warrick
Title: President

Tax ID: _____
Org. ID (if any): _____

Dealer's Chief Executive Office and Principal Place of Business:
2300 N. 23rd Avenue
Hollywood, FL 33020

Attach copy of Driver's License or State ID card for parties signing in their individual capacity.

GE COMMERCIAL DISTRIBUTION FINANCE CORPORATION


By: 
Print Name: Carl D. Hawkins II
Title: Credit Analyst

EXHIBIT B

**STATE OF FLORIDA UNIFORM COMMERCIAL CODE
FINANCING STATEMENT FORM**

FLORIDA SECURED TRANSACTION REGISTRY

FILED

2007 Sep 04 AM 12:00

***** 200706438823 *****

A. NAME & DAYTIME PHONE NUMBER OF CONTACT PERSON	
MIRANDA LUBRUS 770-541-5885	
B. SEND ACKNOWLEDGEMENT TO:	
Name OR CDF	
Address PO BOX 740143	
Address ATLANTA, GA 30374	
City/State/Zip	

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - INSERT ONLY ONE DEBTOR NAME (1a OR 1b) - Do Not Abbreviate or Combine Names

1a. ORGANIZATION'S NAME SCOOTER SUPERSTORE OF AMERICA, INC.				
1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS 2300 N. 23RD AVENUE		CITY HOLLYWOOD	STATE FL	POSTAL CODE 33020
1d. TAX ID#	REQUIRED ADD'L INFO RE: ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION CORPORATION	1f. JURISDICTION OF ORGANIZATION FLORIDA	1g. ORGANIZATIONAL ID# <input checked="" type="checkbox"/> NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - INSERT ONLY ONE DEBTOR NAME (2a OR 2b) - Do Not Abbreviate or Combine Names

2a. ORGANIZATION'S NAME				
2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
2d. TAX ID#	REQUIRED ADD'L INFO RE: ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID# <input type="checkbox"/> NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - INSERT ONLY ONE SECURED PARTY NAME (3a OR 3b)

3a. ORGANIZATION'S NAME GE COMMERCIAL DISTRIBUTION FINANCE CORPORATION				
3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS PO BOX 740143		CITY ATLANTA	STATE GA	POSTAL CODE 30374

4. This FINANCING STATEMENT covers the following collateral:

This financing statement covers all personal property of debtor, whether such property or debtor's right, title or interest therein or thereto is now owned or existing or hereafter acquired or arising, and wherever located, including, without limitation, all accounts, inventory, equipment, fixtures, other goods, general intangibles (including, without limitation, payment intangibles), chattel paper (whether tangible or electronic, instruments (including, without limitation, promissory notes), investment property and documents, and all products and proceeds of the foregoing. Without limiting the foregoing, the collateral includes debtor's right to all price protection payments, rebates, discounts, credits, factory holdbacks, incentive payments and any other amounts due debtor at any time from a person from whom debtor has purchased inventory or other personal property. In addition, the collateral includes, without limitation, all books and records, electronic or otherwise, which evidence or otherwise relate to any of the foregoing property, and all computers, disks, tapes, media and other devices in which such records are stored.

5. ALTERNATE DESIGNATION (if applicable)

<input type="checkbox"/> LESSOR/LESSOR	<input type="checkbox"/> CONSIGNEE/CONSIGNOR	<input type="checkbox"/> BAILEE/BAILOR
<input type="checkbox"/> AG. LIEN	<input type="checkbox"/> NON-UCC FILING	<input type="checkbox"/> SELLER/BUYER

6. Florida DOCUMENTARY STAMP TAX - YOU ARE REQUIRED TO CHECK EXACTLY ONE BOX

All documentary stamps due and payable or to become due and payable pursuant to s. 201.22 F.S., have been paid.

Florida Documentary Stamp Tax is not required.

7. OPTIONAL FILER REFERENCE DATA

STANDARD FORM - FORM UCC-1 (REV.12/2001)

Filing Office Copy

Approved by the Secretary of State, State of Florida

EXHIBIT C

INVENTORY FINANCING AGREEMENT

This Inventory Financing Agreement (as from time to time amended and together with any Transaction Statements, as hereinafter defined, "**Agreement**") is between GE Commercial Distribution Finance Corporation ("**CDF**"), with its chief executive office and principal place of business at 5595 Trillium Boulevard, Hoffman Estates, Illinois 60192 and Scooter Superstore of America - Midtown, LLC, a [GA] limited liability company ("**Dealer**").

1. **Extensions of Credit.** Subject to the terms of this Agreement, CDF may extend credit to or on behalf of Dealer from time to time to enable Dealer to purchase inventory from CDF-approved vendors ("**Vendors**") and for other purposes. CDF's decision to advance funds is discretionary on CDF's part. CDF may combine all of CDF's advances to Dealer or on Dealer's behalf, whether under this Agreement or any other agreement, and whether provided by one or more of CDF's branch offices, together with all finance charges, fees and expenses related thereto, to make one debt owed by Dealer. Without limiting the discretionary nature of this credit facility, CDF may, without notice to Dealer, elect not to finance any inventory sold by particular Vendors who are in default to CDF, or with respect to which CDF reasonably feels insecure. This Agreement concerns the extension of credit, and not the provision of goods or services.

2. **Financing Terms.** Certain financial terms of any advance which CDF makes under this Agreement are not set forth herein because such terms depend, in part, on various factors, including without limitation, the availability of Vendor discounts, payment terms or other incentives, CDF's floorplanning volume with Dealer and Vendor and other economic factors which vary from time to time. Therefore, CDF and Dealer agree to set forth in this Agreement only the general terms of Dealer's financing arrangement with CDF. Upon agreeing to finance an item of inventory for Dealer, CDF will transmit or otherwise send to Dealer a "**Transaction Statement**" which is a record that may be authenticated and transmitted by CDF to Dealer from time to time which identifies the Collateral financed and/or the advance made and the terms and conditions of repayment of such advance. Dealer agrees that Dealer's failure to notify CDF in writing of any objection to a Transaction Statement within thirty (30) days after a Transaction Statement is transmitted or otherwise sent to Dealer shall constitute Dealer's (a) acceptance of all terms thereof, (b) agreement that CDF is financing such inventory at Dealer's request, and (c) agreement that such Transaction Statement will be incorporated herein by reference. If Dealer objects to the terms of any Transaction Statement, Dealer will pay CDF for such inventory in accordance with the most recent terms for similar inventory to which Dealer has not objected (or, if there are no prior terms, at the lesser of 16% per annum or at the maximum lawful contract rate of interest permitted under applicable law), subject to termination of this Agreement by CDF and its rights under the termination provision contained herein. With respect to any advance CDF makes to a Vendor on behalf of Dealer, CDF may apply against any such amount owed to Vendor any amount CDF is owed from such Vendor with respect to Free Floor Periods (each a "**CDF Credit**") or any other amounts. Notwithstanding the foregoing, Dealer agrees to pay the full amount reflected on any Transaction Statement.

3. **Security Interest.**

(a) Dealer hereby grants to CDF a security interest in all of the Collateral as security for all Obligations.

(b) "**Collateral**" means all personal property of Dealer, whether such property or Dealer's right, title or interest therein or thereto is now owned or existing or hereafter acquired or arising, and wherever located, including without limitation, all Accounts, Inventory, Equipment, Fixtures, other Goods, General Intangibles (including without limitation, Payment Intangibles), Chattel Paper (whether tangible or electronic), Instruments (including without limitation, Promissory Notes), Deposit Accounts, Investment Property and Documents and all Products and Proceeds of the foregoing. Without limiting the foregoing, the Collateral includes Dealer's right to all Vendor Credits (as defined below). Similarly, the Collateral includes, without limitation, all books and records, electronic or otherwise, which evidence or otherwise relate to any of the foregoing property, and all computers, disks, tapes, media and other devices in which such records are stored. For purposes of this Section 3 only, capitalized terms used in this Section 3, which are not otherwise defined, shall have the meanings given to them in Article 9 of the Illinois Uniform Commercial Code.

(c) "**Obligations**" means all indebtedness and other obligations of any nature whatsoever of Dealer to CDF and/or to any person that at any time directly or indirectly controls, is controlled by, or is under common control with CDF (a "**CDF Affiliate**"), whether such indebtedness or other obligations arise under this Agreement or any other existing or future agreement between or among Dealer, CDF and/or a CDF Affiliate or otherwise, and whether for principal, interest, fees, expenses, indemnification obligations or otherwise, and whether such indebtedness or other obligations are existing, future, direct, indirect, acquired, contractual, noncontractual, joint and/or several, fixed, contingent or otherwise.

(d) "**Vendor Credits**" means all of Dealer's rights to any price protection payments, rebates, discounts, credits, factory holdbacks, incentive payments and other amounts which at any time are due Dealer from a Vendor.

4. **Representations and Warranties.** Dealer represents and warrants that at the time of execution of this Agreement and at the time of each approval and each advance hereunder: (a) Dealer is in good standing, does not conduct business under any trade styles or trade names except as disclosed by the Dealer to CDF in writing and has all the necessary authority to enter into and perform this Agreement and Dealer will not violate its organizational documents, or any law, regulation or agreement binding upon it, by entering into or performing its obligations under this Agreement; (b) Dealer keeps its records respecting accounts and chattel paper at its chief executive office identified below, and the only locations at which Collateral is located have been or will be disclosed by the Dealer to CDF in writing prior to the execution of this Agreement (together with additional locations of Dealer in the United States with respect to which Dealer gives CDF at least thirty (30) days prior written notice, "**Permitted Locations**"); (c) this Agreement correctly sets forth Dealer's true legal name, the type of its organization (if not an individual), the state in which Dealer is incorporated or otherwise organized, and Dealer's organizational identification number, if any; (d) all information supplied by Dealer to CDF, including any financial, credit or accounting statements or application for credit, in connection with this Agreement is true, correct and complete; (e) all advances and other transactions hereunder are for business purposes and not for personal, family, household or any other consumer purposes; (f) Dealer has good title to all Collateral; (g) there are no actions or proceedings pending or threatened against Dealer which might result in any material adverse change in Dealer's financial or business condition; and (h) when requested by CDF, Dealer will provide CDF with a copy of Dealer's organizational documents, and will provide any subsequent amendments thereto bearing indorsements of filing from the appropriate governmental authority, or such other documents verifying Dealer's true and correct legal name as CDF may request from time to time.

5. Covenants.

(a) Until sold as permitted by this Agreement, Dealer shall own all Collateral financed by CDF free and clear of all liens, security interests, claims and other encumbrances, whether arising by agreement or operation of law (collectively "Liens"), other than Liens in favor of CDF and subordinate Liens in favor of other persons with respect to which CDF shall have first consented in writing.

(b) Dealer will: (1) keep all Collateral at Permitted Locations and keep all tangible Collateral in good order, repair and operating condition and insured as required herein; (2) promptly file all tax returns required by law and promptly pay all taxes, fees, and other governmental charges for which it is liable, including without limitation all governmental charges against the Collateral or this Agreement; (3) permit CDF and its designees, without notice, to inspect the Collateral during normal business hours and at any other time CDF deems desirable (and Dealer hereby grants CDF and its designees an irrevocable license to enter Dealer's business locations during normal business hours without notice to Dealer to account for and inspect all Collateral and to examine and copy Dealer's books and records related to the Collateral); (4) keep complete and accurate records of its business, including inventory, accounts and sales, and permit CDF and its designees to inspect and copy such records upon request; (5) furnish CDF with such additional information regarding the Collateral and Dealer's business and financial condition as CDF may from time to time reasonably request (including without limitation financial statements and projections more frequently than set forth below); (6) immediately notify CDF of any material adverse change in Dealer's prospects, business, operations or condition (financial or otherwise) or in any Collateral; (7) execute (or cause any third party in possession of Collateral to execute) all documents CDF requests to perfect and maintain CDF's security interest in the Collateral; (8) deliver to CDF immediately upon each request by CDF (and CDF may retain) each certificate of title or statement of origin issued for Collateral financed by CDF; (9) at all times be duly organized, existing, in good standing, qualified and licensed to do business in each jurisdiction in which the nature of its business or property so requires; (10) notify CDF of the commencement of any material legal proceedings against Dealer or any Guarantor (as defined below); and (11) comply with all laws, rules and regulations applicable to Dealer, including without limitation, the USA PATRIOT ACT and all laws, rules and regulations relating to import or export controls or anti-money laundering.

(c) Dealer will not without CDF's prior written consent: (1) use (except for demonstration for sale), rent, lease, sell, transfer, consign, license, encumber or otherwise dispose of Collateral except for sales of inventory at retail in the ordinary course of Dealer's business; (2) sell or otherwise transfer inventory to a Dealer Affiliate (as defined below); (3) engage in any other material transaction not in the ordinary course of Dealer's business; (4) change its business in any material manner or its structure or be a party to a merger or consolidation or change its registration to a registered organization other than as specified above; (5) change its name or conduct business under a trade style or trade name other than those disclosed by the Dealer to CDF in writing without giving CDF at least thirty (30) days' prior written notice thereof; (6) change its chief executive office or office where it keeps its records with respect to accounts or chattel paper; (7) change the state in which it is incorporated or otherwise organized (except upon thirty (30) days' prior written notice to CDF); (8) finance on a secured basis with any Vendor or any third party the acquisition of inventory of the same brand as any inventory financed or to be financed by CDF; or (9) store Collateral financed by CDF with any third party. For purposes of this Agreement, a "Dealer Affiliate" means any person that: (i) directly or indirectly controls, is controlled by or is under common control with Dealer, (ii) directly or indirectly owns 5% or more of Dealer, (iii) is a director, partner, manager, or officer of Dealer or an affiliate of Dealer, or (iv) any natural person related to Dealer or an affiliate of Dealer.

6. Insurance.

(a) All risk of loss, damage to or destruction of Collateral shall at all times be on Dealer. Dealer shall keep tangible Collateral insured for full value against all insurable risks under policies delivered to CDF and issued by insurers satisfactory to CDF with loss payable to CDF and at CDF's request under long-form mortgagee endorsements as its interest may appear subject to cancellation or change only (i) upon ten (10) days written notice to CDF for non-payment of premium or (ii) upon thirty (30) days written notice to CDF for all other reasons. CDF is authorized, but not required, to act as attorney-in-fact for Dealer in adjusting and settling any insurance claims under any such policy and in endorsing any checks or drafts drawn by insurers. Dealer shall promptly remit to CDF in the form received, with all necessary endorsements, all proceeds of such insurance which Dealer may receive. CDF, at its election, shall either apply any proceeds of insurance it may receive toward payment of the Obligations or pay such proceeds to Dealer.

(b) The following notice is given pursuant to Section 180/15 of the Collateral Protection Act set forth in Chapter 815 Section 180/1 of the Illinois Compiled Statutes; nothing contained in such notice shall be deemed to limit or modify the terms of this Agreement: **UNLESS DEALER PROVIDES EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY DEALER'S AGREEMENT WITH CDF, CDF MAY PURCHASE INSURANCE AT DEALER'S EXPENSE TO PROTECT CDF'S INTEREST IN DEALER'S COLLATERAL. THIS INSURANCE MAY, BUT NEED NOT, PROTECT DEALER'S INTEREST. THE COVERAGE THAT CDF PURCHASES MAY NOT PAY ANY CLAIM THAT DEALER MAKES OR ANY CLAIM THAT IS MADE AGAINST DEALER IN CONNECTION WITH THE COLLATERAL. DEALER MAY LATER CANCEL ANY INSURANCE PURCHASED BY CDF, BUT ONLY AFTER PROVIDING CDF EVIDENCE THAT DEALER HAS OBTAINED INSURANCE AS REQUIRED UNDER THIS AGREEMENT. IF CDF PURCHASES INSURANCE FOR THE COLLATERAL, DEALER WILL BE RESPONSIBLE FOR THE COSTS OF THAT INSURANCE, INCLUDING THE INSURANCE PREMIUM, INTEREST AND ANY OTHER CHARGES CDF MAY IMPOSE IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE, UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE MAY BE ADDED TO DEALER'S TOTAL OUTSTANDING BALANCE OR OBLIGATION. THE COSTS OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE DEALER MAY BE ABLE TO OBTAIN ON ITS OWN.**

7. **Financial Statements.** Unless waived by CDF, Dealer will deliver to CDF, in a form satisfactory to CDF: (a) Dealer's year-end balance sheet and annual profit and loss statement for each of its fiscal years, within twenty (20) days after the same are prepared but in no event later than one hundred and twenty (120) days after the end of each fiscal year; (b) within forty-five (45) days after the end of each of Dealer's fiscal quarters, a reasonably detailed balance sheet and income statement as of the last day of such quarter covering Dealer's operations for such quarter; and (c) within ten (10) days after CDF's request, any other information relating to the Collateral or the financial condition of Dealer or any Guarantor. Dealer represents that all financial statements and information which have been or may hereafter be delivered by Dealer or any Guarantor are and will be correct and prepared in accordance with generally accepted accounting principles consistently applied, and there has been no material adverse change in the financial or business condition of Dealer or any Guarantor since the submission to CDF of such financial statements, and Dealer acknowledges CDF's reliance thereof.

8. **Payment Terms.** Dealer will immediately pay CDF the principal amount of the Obligations owed CDF on each item of Collateral financed by CDF on the earliest occurrence of any of the following events: (a) when such Collateral is lost, stolen or damaged; (b) for Collateral financed under any pay-as-sold ("PAS") terms, when such Collateral is sold, transferred, rented, leased, otherwise disposed of, or its payment term has matured; (c) for Collateral financed under any scheduled payment program ("SP") terms, in strict accordance with

the installment payment schedule; (d) in strict accordance with any curtailment schedule for such Collateral; and (e) when otherwise required under the terms of this Agreement. The PAS, SPP and curtailment terms are or may be set forth in a Transaction Statement. If Dealer is required to make immediate payment to CDF of any past due obligation discovered during any Collateral review, or at any other time, CDF's acceptance of such payment shall not be construed to have waived or amended the terms of its financing program. Dealer will send all payments to CDF as directed. CDF may apply: (1) payments to reduce finance charges first and then principal, regardless of Dealer's instructions; and (2) principal payments to the oldest (earliest) invoice for Collateral financed by CDF, but, in any event, all principal payments, may, in CDF's sole discretion, first be applied to such Collateral which is sold, lost, stolen, damaged, rented, leased, or otherwise disposed of or unaccounted for. Any Vendor Credit granted to Dealer for any Collateral will not reduce the Obligations Dealer owes CDF until CDF has received payment therefor in cash. Dealer will: (A) pay CDF even if any Collateral is defective or fails to conform to any warranties extended by any third party; and (B) indemnify and hold CDF harmless against all claims and defenses asserted by any buyer of any Collateral. Dealer waives all rights of setoff Dealer may have against CDF. Any payment hereunder which would otherwise be due on a day which is not a Business Day, shall be due on the next succeeding Business Day, with such extension of time included in any calculation of applicable finance charges. Any advances which are not used to acquire inventory, as contemplated hereby, shall be paid on demand unless otherwise provided in this Agreement or in any Transaction Statement. In order to adequately secure Dealer's Obligations to CDF, Dealer shall, at CDF's request, immediately pay CDF the amount necessary to reduce the sum of CDF's outstanding advances with respect to inventory received by Dealer to an amount which does not exceed the aggregate invoice price to Dealer of the inventory in Dealer's possession which (i) is financed by CDF, and (ii) in which CDF has a perfected first priority lien. For purposes of this Agreement, "Business Day" means any day the Federal Reserve Bank of Chicago is open for the transaction of business.

9. Calculation of Charges.

(a) Dealer shall pay fees, charges and interest (collectively, "Charges") with respect to each advance in accordance with the Agreement. Dealer shall pay CDF its customary Charge for any check or other item which is returned unpaid to CDF. Unless otherwise provided in the Agreement, the following additional provisions shall be applicable to Charges: (i) any reference to "Prime Rate" shall mean for any calendar month the highest "prime rate" published in the "Money Rates" column of the Wall Street Journal on the first Business Day of such month; (ii) all Charges shall be paid by Dealer monthly pursuant to the terms of the billing statement in which such Charges appear; (iii) interest on each advance and principal amount of the Obligations related thereto shall be computed each calendar month on the sum of the daily balances thereof during such month divided by thirty (30) and (A) in the case where a monthly rate of interest is provided for, multiplied by the monthly rate provided for in the Agreement; or (B) in the case where an annual rate of interest is provided for, multiplied by one-twelfth of the annual rate provided for in the Agreement; or (C) in the case where a daily rate of interest is provided for, multiplied by such daily rate and multiplied by thirty (30); (iv) interest on an advance shall begin to accrue on the Start Date which shall be defined as the earlier of: (A) the invoice date referred to in the Vendor's invoice; or (B) the ship date referred to in the Vendor's invoice; or (C) the date CDF makes such advance; provided, however, if a Vendor fails to fully pay, by honoring or paying any CDF Credit or otherwise, the interest or other cost of financing such inventory during the period between the Start Date and the end of the Free Floor Period (as defined below), then Dealer shall pay such interest to CDF on demand as if there were no Free Floor Period with respect to such inventory; (v) for the purpose of computing Charges, any payment will be credited pursuant to CDF's payment recognition policy, as in effect from time to time; and (vi) advances or any part thereof not paid when due (and Charges not paid when due, at the option of CDF, shall become part of the principal amount of the Obligations and shall bear interest at the Default Rate (as defined below). For purposes of this Agreement, the following definitions shall apply: "Default Rate" shall mean the default rate specified in Dealer's financing program with CDF, if any, or if there is none so specified, at the lesser of 3% per annum above the rate in effect immediately prior to the Default, or the highest lawful contract rate of interest permitted under applicable law; "Free Floor Period" shall mean a period equal to the number of days during which a Vendor agrees to assume the cost of financing Collateral purchased by Dealer by granting CDF a CDF Credit.

(b) CDF intends to strictly conform to the usury laws governing this Agreement. Regardless of any provision contained herein, in any Transaction Statement, or in any other document, CDF shall never be deemed to have contracted for, charged or be entitled to receive, collect or apply as interest, any amount in excess of the maximum amount allowed by applicable law. If CDF ever receives any amount which, if considered to be interest, would exceed the maximum amount permitted by law, CDF will apply such excess amount to the reduction of the unpaid principal balance which Dealer owes, and then will pay any remaining excess to Dealer. In determining whether the interest paid or payable exceeds the highest lawful rate, Dealer and CDF shall, to the maximum extent permitted under applicable law, (1) characterize any non-principal payment (other than payments which are expressly designated as interest payments hereunder) as an expense or fee rather than as interest, (2) exclude voluntary pre-payments and the effect thereof, and (3) spread the total amount of interest throughout the entire term of this Agreement so that the interest rate is uniform throughout such term. CDF will recognize and credit payments made by check, ACH, federal wire, or other means, according to its payment recognition policies from time to time in effect, or as otherwise agreed. Information regarding CDF payment recognition policies is available from Dealer's CDF representative, the CDF website, or will be communicated pursuant to Section 10(b) below.

(c) Dealer may receive a record which is or contains a Self-Certification Floorcheck ("SCF") at the beginning of certain months reflecting unpaid advances through the last day of the preceding month. If Dealer receives an SCF, Dealer must complete it and return it to CDF by the 15th day of the same month in which it was received by Dealer, along with all payments due CDF under this Agreement. If CDF does not receive the completed SCF and all payments due by the 25th day of the month in which the SCF was received by Dealer, Dealer will pay CDF a self-certification fee as may be announced from time to time for such month in addition to all other amounts owed. The cost of any collateral inspection occasioned by a default or otherwise out of the ordinary course of business may be added to the Obligations at CDF's discretion.

10. Billing Statement/Fees; Right to Modify Charges and Other Terms.

(a) CDF will transmit or otherwise send Dealer a monthly billing statement identifying all charges due on Dealer's account with CDF. The charges specified on each billing statement will be (1) due and payable in full immediately on receipt, and (2) an amount stated, unless CDF receives Dealer's written objection thereto within fifteen (15) days after it is transmitted or otherwise sent to Dealer. If CDF does not receive, by the 25th day of any given month, payment of all charges accrued to Dealer's account with CDF during the immediately preceding month, Dealer will (to the extent allowed by law) pay CDF a late fee equal to the greater of \$5 or 5% of the amount of such charges (payment of such fee does not waive the default caused by the late payment). CDF may adjust the billing statement at any time to conform to applicable law and this Agreement.

(b) CDF may charge one or more fees in connection with the servicing and administration of Dealer's account. From time to time, CDF may provide written notice to Dealer of new or changed fees, interest and/or other finance charges (including without limitation, increases or decreases in the periodic rate or amount of finance charges, the method of computing finance charges and when and how finance charges, and principal payments, are payable), policies, practices and other charges and/or credit terms (collectively, "Fees and

Terms) payable by, or applicable to, Dealer or relating to Dealer's account generally, or in connection with specific services, or events, to be effective as of the notice date, or such other future effective date as CDF shall advise, with respect to existing Obligations owing by Dealer to CDF and/or to Obligations incurred or arising after such notice or future effective date, as the case may be, all as CDF may elect by so indicating in such notice. Such notice may be delivered by mail, courier or electronically in a separate writing or website posting, or set forth in the Transaction Statement and/or the billing statement. Dealer shall be deemed to have accepted such Fees and Terms by either (1) making any request for financing after the effective date of such notice, or (2) failing to notify CDF in writing of any objection to a Transaction Statement, billing statement or written notice advising of such Fees and Terms within fifteen (15) days after such notice has been sent to Dealer. If Dealer objects to the Fees and Terms, such Fees and Terms shall not be imposed, but CDF may charge or implement the last Fees and Terms to which Dealer has not objected, and may elect to terminate Dealer's financing program.

11. **Default.** The occurrence of one or more of the following events shall constitute a default by Dealer (a "Default"): (a) Dealer shall fail to pay any Obligations when due or any remittance for any Obligations is dishonored when first presented for payment; (b) any representation made to CDF by Dealer or by any guarantor, surety, issuer of a letter of credit or any person other than Dealer primarily or secondarily liable with respect to any Obligations (a "Guarantor") shall not be true when made or if Dealer or any Guarantor shall breach any covenant, warranty or agreement to or with CDF; (c) Dealer (including, if Dealer is a partnership or limited liability company, any partner or member of Dealer) or any Guarantor shall die, become insolvent or generally fail to pay its debts as they become due or, if a business, shall cease to do business as a going concern; (d) any letter of credit or other form of collateral provided by Dealer or a Guarantor to CDF with respect to any Obligations or Collateral shall terminate or not be renewed at least sixty (60) days prior to its stated expiration or maturity; (e) Dealer abandons any Collateral; (f) any Guarantor shall revoke, terminate or limit, or take any action purporting to revoke, terminate or limit, any guaranty or other assurance of payment relating to any Obligations; (g) Dealer or any Guarantor shall make an assignment for the benefit of creditors, or commence a proceeding with respect to itself under any bankruptcy, reorganization, arrangement, insolvency, receivership, dissolution or liquidation statute or similar law of any jurisdiction, or any such proceeding shall be commenced against it or any of its property (an "Automatic Default"); (h) an attachment, sale or seizure shall be issued or shall be executed against any assets of Dealer or of any Guarantor; (i) Dealer shall lose, or shall be in default of, any franchise, license or right to deal in any Collateral which CDF finances; (j) Dealer, Guarantor or any third party shall file any correction or termination statement with respect to any Uniform Commercial Code (the "UCC") filing made by CDF in connection herewith; (k) a material adverse change shall occur in the business, operations or condition (financial or otherwise) of Dealer (including, if Dealer is a partnership or limited liability company, any partner or member of Dealer) or any Guarantor or with respect to the Collateral; (l) Dealer or any Guarantor fails to pay any debt or perform any other obligation owed to any third party; (m) Dealer or any Guarantor defaults under the terms of any agreement with any CDF Affiliate; or (n) CDF in good faith believes the prospect of payment of any Obligations is impaired or CDF deems itself insecure.

12. **Rights and Remedies Upon Default.** Upon the occurrence of a Default, CDF shall have all rights and remedies of a secured party under the UCC as in effect in any applicable jurisdiction and other applicable law and all the rights and remedies set forth in this Agreement. CDF may terminate any obligations it has under this Agreement and any outstanding credit approvals immediately and/or declare any and all Obligations immediately due and payable without notice or demand. Dealer waives notice of intent to accelerate, and of acceleration of any Obligations. CDF may enter any premises of Dealer, with or without process of law, without force, to search for, take possession of, and remove the Collateral, or any part thereof. If CDF requests, Dealer shall cease disposition of and shall assemble the Collateral and make it available to CDF, at Dealer's expense, at a convenient place or places designated by CDF. CDF may take possession of the Collateral or any part thereof on Dealer's premises and cause it to remain there at Dealer's expense, pending sale or other disposition. Dealer agrees that the sale of inventory by CDF to a person who is liable to CDF under a guaranty, endorsement, repurchase agreement or the like shall not be deemed to be a transfer subject to UCC §9-618 or any similar provision of any other applicable law, and Dealer waives any provision of such laws to that effect. Dealer agrees that the repurchase of inventory by a Vendor pursuant to a repurchase agreement with CDF shall be a commercially reasonable method of disposition. Dealer shall be liable to CDF for any deficiency resulting from CDF's disposition, including without limitation a repurchase by a Vendor, regardless of any subsequent disposition thereof. Dealer is not a beneficiary of, and has no right to require CDF to enforce, any repurchase agreement. Any notice of a disposition shall be deemed reasonably and properly given if given to Dealer at least ten (10) days before such disposition. If Dealer fails to perform any of its obligations under this Agreement, CDF may perform the same in any form or manner CDF in its discretion deems necessary or desirable, and all monies paid by CDF in connection therewith shall be additional Obligations and shall be immediately due and payable without notice together with interest payable on demand at the Default Rate. All of CDF's rights and remedies shall be cumulative. At CDF's request, or without request in the event of an Automatic Default, Dealer shall pay all Vendor Credits to CDF as soon as the same are received for application to the Obligations. Dealer authorizes CDF to collect such amounts directly from Vendors and, upon request of CDF, shall instruct Vendors to pay CDF directly. Dealer irrevocably waives any requirement that CDF retain possession and not dispose of any Collateral until after an arbitration hearing, arbitration award, confirmation, trial or final judgment or appeal thereof. CDF's election to extend or not extend credit to Dealer is solely at CDF's discretion and does not depend on the absence or existence of a Default. If a Default is in effect, and without regard to whether CDF has accelerated any Obligations, CDF may, without notice, apply the Default Rate.

13. **Power of Attorney.** Dealer authorizes CDF to: (a) file financing statements describing CDF as "Secured Party," Dealer as "Debtor" and indicating the Collateral; (b) authenticate, execute or endorse on behalf of Dealer any instruments, chattel paper, certificates of title, manufacturer statements of origin, builder's certificate, financing statements and amendments thereto, or other notices or records comprising or related to Collateral or evidencing financing under the Agreement or evidencing or maintaining the perfection of the security interest granted hereby, as attorney-in-fact for Dealer; and (c) supply any omitted information and correct errors in any documents between CDF and Dealer. This power of attorney and the other powers of attorney granted herein are irrevocable and coupled with an interest.

14. **Collection and Other Costs.** Dealer shall pay to CDF on demand all reasonable attorneys' fees and legal expenses and other costs and expenses incurred by CDF in connection with establishing, perfecting, maintaining perfection of, protecting and enforcing its Lien on the Collateral and collecting any Obligations, or in connection with any modification of this Agreement, any Default or in connection with any action or proceeding under any bankruptcy or insolvency laws or incurred pursuant to an arbitration proceeding involving the Dealer, any Guarantor or any Collateral. All fees, expenses, costs and other amounts described in this Section shall constitute Obligations, shall be secured by the Collateral and interest shall accrue thereon at the Default Rate.

15. **Information.** Dealer irrevocably authorizes CDF to investigate and make inquiries of former, current, or future creditors or other persons and credit bureaus regarding or relating to Dealer (including, to the extent permitted by law, any equity holders of Dealer). CDF may provide to any CDF Affiliate or any third parties any financial, credit or other information regarding Dealer that CDF may at any time possess, whether such information was supplied by Dealer to CDF or otherwise obtained by CDF. Further, Dealer irrevocably authorizes and instructs any third parties (including without limitation, any Vendors or customers of Dealer) to provide to CDF any credit, financial or other information regarding Dealer that such third parties may at any time possess, whether such information was supplied by Dealer to such third parties or otherwise obtained by such third parties.

16. **Dealer's Claims Against Vendors.** Dealer will not assert against CDF any claim or defense Dealer may have against any Vendor whether for breach of contract, warranty, misrepresentation, failure to ship, lack of authority, or otherwise, including without limitation claims or defenses based upon charge backs, credit memos, rebates, price protection payments or returns. Any such claims or defenses or other claims or defenses Dealer may have against a Vendor shall not affect Dealer's liabilities or obligations to CDF.

17. **Termination.** Unless sooner terminated as provided in this Agreement or by at least thirty (30) days prior written notice from either party to the other, the term of this Agreement shall be for one (1) year from the date hereof and from year to year thereafter; provided, however, that CDF may terminate the Agreement immediately by notice to Dealer if Dealer objects to any terms of any Transaction Statement, billing statement or written notice advising of Fees and Terms. Upon termination of the Agreement, all Obligations shall become immediately due and payable without notice or demand. Upon any termination, Dealer shall remain fully liable to CDF for all Obligations, including without limitation all fees, expenses and charges, arising prior to or after termination, and all of CDF's rights and remedies and its security interest shall continue until all Obligations to CDF are paid and all obligations of Dealer are performed in full. If CDF makes advances in reliance on a repurchase agreement from a Vendor, it may cease making such advances if it has any concern as to whether such repurchase agreement will cover future advances or be performed by such Vendor. No provision of the Agreement shall be construed to obligate CDF to make any advances. All waivers and indemnifications in CDF's favor, and the agreement to arbitrate, set forth in this Agreement will survive any termination of this Agreement.

18. **Binding Effect.** Dealer cannot assign its interest in this Agreement without CDF's prior written consent. CDF may assign or participate CDF's interest, in whole or in part, without Dealer's consent. This Agreement will protect and bind CDF's and Dealer's respective heirs, representatives, successors and assigns, as the case may be.

19. **Notices.** Except as required by law or as otherwise provided herein, all notices or other communications to be given under the Agreement or under the UCC shall be in writing served either personally, by deposit with a reputable overnight courier with charges prepaid, or by deposit in the United States mail, first-class postage prepaid or provided for, addressed to Dealer at its chief executive office shown below or to any office to which CDF sends billing statements, or to CDF at its address shown in the preamble hereto, to the attention of its Credit Department, or at such other address designated by such party by notice to the other. Any such communication shall be deemed to have been given upon delivery in the case of personal delivery, one Business Day after deposit with an overnight courier or two (2) calendar days after deposit in the United States mail except that any notice of change of address shall not be effective until actually received.

20. **Severability.** If any provision of this Agreement or its application is invalid or unenforceable, the remainder of this Agreement will not be impaired or affected and will remain binding and enforceable.

21. **Supplement.** If Dealer and CDF have previously executed other agreements pertaining to all or any part of the Collateral, this Agreement will supplement, but not amend, such agreement, and this Agreement will neither be deemed a novation nor a termination of such agreement, nor will execution of this Agreement be deemed a satisfaction of any obligation secured by such agreement.

22. **Receipt of Agreement.** Dealer acknowledges that it has received a true and complete copy of this Agreement. Dealer has read and understands this Agreement. Notwithstanding anything herein to the contrary, CDF may rely on any facsimile copy, electronic data transmission, or electronic data storage of this Agreement, any Transaction Statement, billing statement, financing statement, authorization to pre-file financing statements, invoice from a Vendor, financial statements or other reports, which will be deemed an original, and the best evidence thereof for all purposes.

23. **Acceptance by CDF.** CDF may accept this Agreement by issuance of an approval to a Vendor for the purchase of inventory by Dealer or by making an advance hereunder.

24. **Miscellaneous.** Time is of the essence regarding Dealer's performance of its obligations to CDF. Dealer's liability to CDF is direct and unconditional and will not be affected by the release or nonperfection of any security interest granted hereunder. CDF may refrain from or postpone enforcement of this Agreement or any other agreements between CDF and Dealer without prejudice, and the failure to strictly enforce these agreements will not create a course of dealing which waives, amends or modifies such agreements. Any waiver by CDF of a Default shall only be effective if in writing signed by CDF and transmitted to Dealer. The express terms of this Agreement will not be modified by any course of dealing, usage of trade, or custom of trade which may deviate from the terms hereof. If Dealer fails to pay any taxes, fees or other obligations which may impair CDF's interest in the Collateral, or fails to keep any Collateral insured, CDF may, but shall not be required to, pay such amounts. Such paid amounts will be: (a) additional Obligations which Dealer owes to CDF, which are subject to finance charges as provided herein and shall be secured by the Collateral; and (b) due and payable immediately in full. Section titles used herein are for convenience only, and do not define or limit the contents of any Section. All words used herein shall be understood and construed to be of such number and gender as the circumstances may require. This Agreement may be validly executed in one or more multiple counterpart signature pages. This Agreement shall be construed without presumption for or against any party who drafted all or any portion of this Agreement. No modification of this Agreement shall bind CDF unless in a writing signed by CDF and transmitted to Dealer. Among other symbols, CDF hereby adopts "GE Commercial Distribution Finance Corporation," "GE Commercial Distribution Finance," "GECDF" or "CDF" as evidence of its intent to authenticate a record.

25. **Limitation of Remedies and Damages.** In the event there is any dispute under this Agreement, the aggrieved party shall not be entitled to exemplary or punitive damages so that the aggrieved party's remedy in connection with any action arising under or in any way

related to this Agreement shall be limited to a breach of contract action and any damages in connection therewith are limited to actual and direct damages, except that CDF may seek equitable relief in connection with any judicial repossession of, or temporary restraining order with respect to, the Collateral.

26. BINDING ARBITRATION.

(a) **Arbitrable Claims.** Except as otherwise specified below, all actions, disputes, claims and controversies under common law, statutory law or in equity of any type or nature whatsoever, whether arising before or after the date of this Agreement, and whether directly or indirectly relating to: (a) this Agreement and/or any amendments and addenda hereto, or the breach, invalidity or termination hereof; (b) any previous or subsequent agreement between CDF and Dealer; (c) any act committed by CDF or by any parent company, subsidiary or affiliated company of CDF (the "**CDF Companies**"), or by any employee, agent, officer or director of a CDF Company whether or not arising within the scope and course of employment or other contractual representation of the CDF Companies provided that such act arises under a relationship, transaction or dealing between CDF and Dealer; and/or (d) any other relationship, transaction or dealing between CDF and Dealer (collectively the "**Disputes**"), will be subject to and resolved by binding arbitration. Notwithstanding the foregoing, the parties agree that either party may pursue claims against the other that do not exceed Fifteen Thousand Dollars (\$15,000) in the aggregate in a court of competent jurisdiction. Service of arbitration claims shall be acceptable if made by U.S. mail or overnight delivery to the address for the party described herein.

(b) **Administrative Body.** All arbitration hereunder will be conducted in accordance with the Commercial Arbitration Rules of either: (a) The American Arbitration Association ("**AAA**"); or (b) United States Arbitration & Mediation ("**USA&M**"). The party first filing an arbitration claim shall designate which arbitration forum and rules are to be applied for all disputes between the parties. The arbitration rules are currently found at www.adr.org for AAA, and at www.usam-midwest.com for USA&M. AAA claims may be filed in any AAA office. Claims filed with USA&M shall be filed in its Midwest office located at 720 Olive Street, Suite 2020, St. Louis, Missouri 63101. All arbitrator(s) selected will be attorneys with at least five (5) years secured transactions experience. A panel of three arbitrators shall hear all claims exceeding One Million Dollars (\$1,000,000), exclusive of interest, costs and attorneys' fees. The arbitrator(s) will decide if any inconsistency exists between the rules of the applicable arbitral forum and the arbitration provisions contained herein. If such inconsistency exists, the arbitration provisions contained herein will control and supersede such rules. The arbitrator shall follow the terms of this Agreement and the applicable law, including without limitation, the attorney-client privilege and the attorney work product doctrine.

(c) **Hearings.** Each party hereby consents to a documentary hearing for all arbitration claims by submitting the dispute to the arbitrator(s) by written briefs and affidavits, along with relevant documents. However, arbitration claims will be submitted by way of an oral hearing if any party requests an oral hearing within forty (40) days after service of the claim and that party remits the appropriate deposit for fees and arbitrator compensation within ten (10) days of making the request. Each party agrees that failure to timely pay all fees and arbitrator compensation billed to the party requesting the oral hearing will be deemed such party's consent to submitting the Dispute to the arbitrator on documents and such party's waiver of its request for an oral hearing. The site of all oral arbitration hearings will be in the Division of the Federal Judicial District in which the designated arbitration association maintains a regional office that is closest to Dealer.

(d) **Discovery.** Discovery permitted in any arbitration proceeding commenced hereunder is limited as follows. No later than forty (40) days after the filing and service of a claim for arbitration, the parties in contested cases will exchange detailed statements setting forth the facts supporting the claim(s) and all defenses to be raised during the arbitration, and a list of all exhibits and witnesses. No later than twenty-one (21) days prior to the oral arbitration hearing, the parties will exchange a final list of all exhibits and all witnesses, including any designation of any expert witness(es) together with a summary of their testimony; a copy of all documents and a detailed description of any property to be introduced at the hearing. Under no circumstances will the use of interrogatories, requests for admission, requests for the production of documents or the taking of depositions be permitted. However, in the event of the designation of any expert witness(es), the following will occur: (i) all information and documents relied upon by the expert witness(es) will be delivered to the opposing party; (ii) the opposing party will be permitted to depose the expert witness(es); (iii) the opposing party will be permitted to designate rebuttal expert witness(es); and (iv) the arbitration hearing will be continued to the earliest possible date that enables the foregoing limited discovery to be accomplished.

(e) **Exemplary or Punitive Damages.** The arbitrator(s) will not have the authority to award exemplary or punitive damages.

(f) **Confidentiality of Awards.** All arbitration proceedings, including testimony or evidence at hearings, will be kept confidential, although any award or order rendered by the arbitrator(s) pursuant to the terms of this Agreement may be confirmed as a judgment or order in any state or federal court of competent jurisdiction within the federal judicial district which includes the residence of the party against whom such award or order was entered. This Agreement concerns transactions involving commerce among the several states. The Federal Arbitration Act, Title 9 U.S.C. Sections 1 et seq., as amended ("**FAA**") will govern all arbitration(s) and confirmation proceedings hereunder.

(g) **Prejudgment and Provisional Remedies.** Nothing herein will be construed to prevent CDF's or Dealer's use of bankruptcy, receivership, injunction, repossession, replevin, claim and delivery, sequestration, seizure, attachment, foreclosure, and/or any other prejudgment or provisional action or remedy relating to any Collateral for any current or future debt owed by either party to the other. Any such action or remedy will not waive CDF's or Dealer's right to compel arbitration of any Dispute.

(h) **Attorneys' Fees.** If either Dealer or CDF brings any other action for judicial relief with respect to any Dispute (other than those set forth in Sections 26(a) or 26(g)), the party bringing such action will be liable for and immediately pay all of the other party's costs and expenses (including attorneys' fees) incurred to stay or dismiss such action and remove or refer such Dispute to arbitration. If either Dealer or CDF brings or appeals an action to vacate or modify an arbitration award and such party does not prevail, such party will pay all costs and expenses, including attorneys' fees, incurred by the other party in defending such action. Additionally, if Dealer sues CDF or institutes any arbitration claim or counterclaim against CDF in which CDF is the prevailing party, Dealer will pay all costs and expenses (including attorneys' fees) incurred by CDF in the course of defending such action or proceeding.

(i) **Limitations.** Any arbitration proceeding must be instituted: (a) with respect to any Dispute for the collection of any debt owed by either party to the other, within two (2) years after the date the last payment by or on behalf of the payor was received and applied in respect of such debt by the payee; and (b) with respect to any other Dispute, within two (2) years after the date the incident giving rise thereto occurred, whether or not any damage was sustained or capable of ascertainment or either party knew of such incident. Failure to institute an arbitration proceeding within such period will constitute an absolute bar and waiver to the institution of any proceeding, whether arbitration or a court proceeding, with respect to such Dispute. Notwithstanding the foregoing, this limitations provision will be suspended temporarily as of the date any of the following events occur and will not resume until the date following the date either party is no longer subject to (i) bankruptcy, (ii) receivership, (iii) any proceeding regarding an assignment for the benefit of creditors, or (iv) any legal proceeding, civil or criminal, which prohibits either party from foreclosing any interest it might have in the collateral of the other party.

(j) **Survival After Termination.** The agreement to arbitrate will survive the termination of this Agreement.

27. **Governing Law.** This Agreement and all agreements between Dealer and CDF have been substantially negotiated and will be substantially performed in the state of Illinois. Accordingly, all Disputes will be governed by, and construed in accordance with, the laws of such state, except to the extent inconsistent with the provisions of the FAA, which will control and govern all arbitration proceedings hereunder.


28. **INVALIDITY/UNENFORCEABILITY OF BINDING ARBITRATION.** IF THIS AGREEMENT IS FOUND TO BE NOT SUBJECT TO ARBITRATION, ANY LEGAL PROCEEDING WITH RESPECT TO ANY DISPUTE WILL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE WITHOUT A JURY. DEALER AND CDF WAIVE ANY RIGHT TO A JURY TRIAL IN ANY SUCH PROCEEDING. SIMILARLY, IF THIS AGREEMENT OR A PARTICULAR DISPUTE HEREUNDER IS NOT SUBJECT TO ARBITRATION, DEALER HEREBY CONSENTS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN ILLINOIS AND WAIVES ANY OBJECTION WHICH DEALER MAY HAVE BASED ON IMPROPER VENUE OR FORUM NON CONVENIENS TO THE CONDUCT OF ANY ACTION OR PROCEEDING IN ANY SUCH COURT.

THIS CONTRACT CONTAINS BINDING ARBITRATION, JURY WAIVER AND PUNITIVE DAMAGE WAIVER PROVISIONS.

Dated: August 29, 2007.

DEALER

Scooter Superstore of America - Midtown, LLC

By: 
Print Name: Peter Warrick
Title: Authorized Representative
Tax ID or SSN:
Org. ID (if any):

Dealer's Chief Executive Office and Principal Place of Business:

Attach copy of Driver's License or State ID card for parties signing in their individual capacity.

GE COMMERCIAL DISTRIBUTION FINANCE CORPORATION

By: _____
Print Name: _____
Title: _____

EXHIBIT D

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

CTY# YEAR UCC #
 0332007-08812
 Filed and Recorded Sep-06-2007 11:36am

ENV.

A. NAME & PHONE OF CONTACT AT FILER [optional]
 AMANDA LUMMUS 770-541-5885

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

GE CDF
 PO BOX 740143
 ATLANTA, GA 30374

10

J.C. Stephenson
 Jay C. Stephenson
 Clerk of Superior Court Cobb Cty. Ga.

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME
SCOOTER SUPERSTORE OF AMERICA- MIDTOWN, LLC

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
40 TECHNOLOGY PKWY SOUTH, #300 GWINNETT GA 30092 USA

1d. TAX ID #: SSN OR EIN ADDL INFO RE ORGANIZATION DEBTOR 1e. TYPE OF ORGANIZATION 1f. JURISDICTION OF ORGANIZATION 1g. ORGANIZATIONAL ID #, if any
LLC GEORGIA NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. TAX ID #: SSN OR EIN ADDL INFO RE ORGANIZATION DEBTOR 2e. TYPE OF ORGANIZATION 2f. JURISDICTION OF ORGANIZATION 2g. ORGANIZATIONAL ID #, if any
 NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME
GE COMMERCIAL DISTRIBUTION FINANCE CORPORATION

OR

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
PO BOX 740143 ATLANTA GA 30374 USA

4. This FINANCING STATEMENT covers the following collateral:

This financing statement covers all personal property of debtor, whether such property or debtor's right, title or interest therein or thereto is now owned or existing or hereafter acquired or arising, and wherever located, including, without limitation, all accounts, inventory, equipment, fixtures, other goods, general intangibles (including, without limitation, payment intangibles), chattel paper (whether tangible or electronic, instruments (including, without limitation, promissory notes), investment property and documents, and all products and proceeds of the foregoing. Without limiting the foregoing, the collateral includes debtor's right to all price protection payments, rebates, discounts, credits, factory holdbacks, incentive payments and any other amounts due debtor at any time from a person from whom debtor has purchased inventory or other personal property. In addition, the collateral includes, without limitation, all books and records, electronic or otherwise, which evidence or otherwise relate to any of the foregoing property, and all computers, disks, tapes, media and other devices in which such records are stored.

5. ALTERNATIVE DESIGNATION (if applicable) LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILO SELLER/BUYER AG. LIEN NON-UCC FILING

6. THIS FINANCING STATEMENT is to be filed (or record) (or recorded) in the REAL ESTATE RECORDS. Although Addendum 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional) All Debtors Debtor 1 Debtor 2

8. OPTIONAL FILER REFERENCE DATA

EXHIBIT E

BUY / SELL AGREEMENT

Franchise Purchase and Sale Agreement made by and between Twist n Scoot LLC, 860 Highland Terrace, Atlanta GA 30306 (Buyer), a Georgia Corporation and Scooter Superstore of America - Midtown, LLC 2455 E Sunrise Blvd. PHN Fort Lauderdale, FL 33304 (Seller). A Florida Corporation

Whereas, for good consideration the parties mutually agree that:

1. Seller agrees to sell, and Buyer agrees to buy the following described property:

Existing dealer agreements and all franchise rights of KYMCO and KYMCO USA related products from Scooter Superstore of America Midtown - Atlanta Inc. at 741 Monroe Dr. NE, Atlanta, GA 30308

All rights and entitlement to any and all domain names and web sites used in the course of this business including but not limited to KYMCO, KYMCO USA, or any other domain name used in connection with the scooter business.

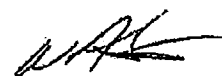
A quantity up to thirty new, unused and undamaged KYMCO motor-scooter models chosen from one or more Scooter Superstore of America locations currently stored in Georgia. Value of motor scooters will have a minimum wholesale value of \$50,000.00.

All KYMCO and KYMCO-USA related store fixtures, signage, illuminated signs, posters, banners, marketing materials, tools, all parts and accessories per attached exhibit "a". All dealer data and repair manuals, books, dealer business manuals, all customer files and mailing list for existing customers including email addresses for KYMCO customers.

List of suppliers and vendors and contact numbers and names and account numbers associated with business.

2. Buyer agrees to pay to Seller and Seller agrees to accept as total purchase price the sum of **\$45,000.00, FORTY FIVE THOUSAND US DOLLARS.**

3. Any and all existing liabilities including liens, tax liability and/or current debt is the sole responsibility of the Seller. Any debt incurred by Twist n Scoot LLC after the contract date, will be the sole responsibility of the Buyer and all property included within paragraph 1 above is sold, transferred and conveyed free and clear of any and all liens, encumbrances or claims of Seller and any third party.



4. Said property is sold in "as is" condition, Seller disclaiming any warranty of merchantability, fitness or working order or condition of the property except that it shall be sold in its present condition, reasonable wear and tear expected on any used item.

5. The parties agree to transfer interest and entitlement on or before the Thirtieth day of December 2010 at the address of the Seller or as designated and agreed by both Seller and Buyer.

6. This agreement shall be binding upon and inure to the benefit of the parties, their successors, assigns and personal representatives.

7. Seller agrees to aid Buyer in all matters to provide a smooth transition in licensing and all other matters pertaining to business process to insure the success of Twist n Scoot LLC.

8. Buyer agrees to a deposit of \$5,000.00, to be paid upon signing of the contract. Buyer intends to pick up Exhibit "a" merchandise along with 6-8 scooters on or before December 20, with a payment of \$10,000.00. The balance of the merchandise and final payment will be made in one or more payments prior to or no later than January 20, 2011.

9. An inventory of Exhibit "a" merchandise will be conducted at time of delivery. Seller agrees to refund the difference between actual inventories versus Exhibit "a".

Signed this 11th day of December 2010

Buyer



William A Gornto / Twist n Scoot LLC

Seller



Wally Warrick / Scooter Superstore of America LLC