

Retail Finance Agreement

TO: CommunityOne Bank, N.A., a North Carolina corporation (hereafter referred to as “The Bank”).

The undersigned (hereinafter referred to as “Dealer”) desires to offer for sale to The Bank retail installment contracts/purchase money security agreements evidencing the retail sale of new and used motor vehicles (all such contracts accepted by The Bank being hereafter referred to as a “Contract” in the singular and as “Contracts” in the plural and all vehicles described in such Contracts being hereinafter referred to as a “Vehicle” in the singular and as “Vehicles” in the plural). The decision to purchase any Contract offered for sale by Dealer shall be made solely by The Bank. As to all Contracts accepted for purchase by The Bank, Dealer agrees as follows:

1. **Assignment.** All Contracts purchased by The Bank from Dealer will be assigned by Dealer without recourse, except as may be otherwise provided in this Retail Finance Agreement (hereafter, this “Agreement”), in the Contracts, or in any addendum, exhibit or modification hereto.
2. **Purchase Price.** The purchase price for each Contract accepted by The Bank shall be an amount equal to the “Amount Financed” as set forth in the Contract. The purchase price, less the Fee described in the next section, shall be paid by The Bank to Dealer in such manner as the parties hereto shall agree upon from time to time.
3. **Acquisition Fee.** Dealer agrees to pay The Bank an acquisition fee (the “Fee”) for each Contract accepted by The Bank. The Fee will be in the amount shown on Exhibit A attached to this Agreement and shall be paid by deducting the amount of the Fee from the purchase price paid to Dealer for such Contract.
4. **Contract Documents.** At the time The Bank acquires any Contract from Dealer, Dealer shall deliver all of the following documents to The Bank:
 - (a) Fully completed and executed Contract, with assignment by Dealer to The Bank;
 - (b) Original buyer’s order/bill of sale;
 - (c) Copy of completed application for transfer of title and recording of lien to be submitted to the North Carolina Division of Motor Vehicles, which shall be filed by Dealer with the Division of Motor Vehicles not later than twenty (20) days after the date of the Contract;
 - (d) Verification of collision insurance; and
 - (e) Copy of buyer’s driver’s license

Dealer understands and agrees that The Bank will purchase a Contract from Dealer only when all of the foregoing documents have been provided to The Bank, and when all of the information in such documents is consistent with all other information provided to The Bank and upon which The Bank relied to make its decision to purchase such Contract.

5. **Representations and Warranties.** In addition to and without limitation of the warranties and representations made by Dealer to The Bank in each Contract, Dealer represents and warrants to The Bank as follows with respect to each Contract purchased by The Bank:
- (a) Each Contract will represent an original bona fide sale of a new or used motor vehicle; will be made in good faith; will be signed and executed by the person(s) or entity(ies) named therein as Buyer and Co-Buyer, if any (hereafter, jointly and severally, the “Buyer”); each Buyer is of legal age and has the capacity to contract at the time of the execution of the Contract, or, if a corporation or other business entity, the Contract has been executed with proper authority by duly-authorized officers, managers or agents.
 - (b) The Vehicle will be correctly and completely described in each Contract; will not be misrepresented to the Buyer; and will have been delivered to and accepted by the Buyer at or before the time of the assignment of the Contract to The Bank.
 - (c) At the time of execution of each Contract, Dealer will have good and clear legal title to the Vehicle described therein; no liens, security interests, encumbrances, or other claims against the Vehicle will exist except the rights of Buyer as set forth in the Contract; and at the time of assignment Dealer will be the sole and unconditional owner of the Contract.
 - (d) The down payment shown in each Contract will have been received by Dealer from Buyer in cash or trade-in at or prior to delivery of the Vehicle sold; and no portion of the down payment will have been loaned to Buyer by Dealer, directly or indirectly.
 - (e) Dealer shall have applied to transfer the title to the Vehicle and to perfect the security interest granted by each Contract as required by applicable law not later than twenty (20) days after the date of each Contract.
 - (f) Each Contract will fully comply with all applicable federal, state and local laws and regulations, including but not limited to the North Carolina Retail Installment Sales Act, the Federal Trade Commission Act, the federal Consumer Credit Protection Act, the federal Truth-in Lending Act and Federal Reserve Board Regulation Z, and the federal Fair Credit Reporting Act.
 - (g) Each Contract was made and entered into by Dealer in strict compliance with the terms and conditions set forth in The Bank’s Programs and Policies attached as Exhibit A hereto, as the same are modified or amended from time to time.
 - (h) Each Contract is not and shall not at any time be subject to any claim, defense, or offset by the Buyer or anyone claiming under the Buyer arising out of the transaction in which the Vehicle was sold to the Buyer.
 - (i) Dealer has not committed nor consented to, nor is Dealer aware of any facts, acts, or omissions with respect to each Contract and the Vehicle secured thereby which would afford the federal government or any state or local government or any agency thereof the right or remedy of forfeiture of all or any part of the Vehicle, any other collateral under the Contract or this Agreement, or any property (including but not limited to money paid) delivered to Dealer or any other party in performance of the obligations under the Contract or this Agreement, or any interest in or income, profits, or proceeds of any of the property described in this sentence.

- (j) Each Contract will be binding upon and fully enforceable against the Buyer in accordance with its terms.
- (k) Each Contract will fully and accurately represent, describe, and disclose the transaction with the Buyer, and Dealer has made no representation or agreement, or otherwise taken any action or omitted to take any action, which would affect the enforceability, accuracy, or sufficiency of the Contract in accordance with its terms.

Each of the foregoing representations and warranties shall survive the execution and delivery of this Agreement and the assignment of each Contract to The Bank; shall be deemed repeated when each Contract is assigned to The Bank; and shall continue in full force and effect until all Contracts assigned to The Bank shall have been fully paid and until Dealer has fully performed all of its obligations to The Bank.

6. **Insurance.** Prior to delivery to Buyer of any Vehicle covered by a Contract, Dealer shall verify liability and property insurance coverage and cause The Bank to be furnished a Physical damage insurance policy with deductibles not exceeding \$500.00 for collision and \$250.00 for comprehensive coverage's on such Vehicle, in a form acceptable to The Bank. If Dealer and Buyer elect, and subject to the approval of The Bank, the insurance premium may be financed in the Contract. Dealer may also provide, and, subject to the approval of The Bank, the Contract may finance, credit life, accident and health and/or unemployment insurance. Dealer shall cause The Bank to be named as primary beneficiary of any policy of credit insurance purchased by the Buyer as a part of any Contract. Dealer agrees that any rebate or refund of premiums or other charges relating to insurance for which it acted as agent shall be handled by Dealer properly and returned to Buyer, as required by applicable law or regulations.
7. **Extended Warranty/Service Contract.** If any Contract includes a charge for extended warranty protection or a service contract by or through Dealer, Dealer shall handle any rebate or refund of charges properly and return the same to Buyer, as required by the terms of such warranty or contract, or by applicable law or regulations.
8. **Financial Data.** Dealer agrees to furnish financial statements and other data concerning its business affairs and financial condition as may be requested by The Bank from time to time. All financial statements will fairly and accurately represent Dealer's financial condition on the dates thereof and will disclose all direct, indirect, absolute, and contingent liabilities. All data furnished The Bank shall be held in the strictest confidence and for the sole use of The Bank, its successors or assigns, except as otherwise required by federal, state or local governmental or law enforcement officials acting pursuant to proper authority.
9. **Events of Default.** Each of the following shall constitute an Event of Default under this Agreement:
 - (a) Any representation or warranty contained herein, or hereafter made pursuant hereto and relating to the transfer of any Contract to The Bank, proves to be untrue or misleading in any respect;
 - (b) The failure by Dealer to pay to The Bank when due any principal, interest, or any other indebtedness, whether now existing or hereafter arising, and whether incurred pursuant to this Agreement, any Contract, or otherwise;
 - (c) The default by Dealer in the due performance or observance of any term or provision of this Agreement;

- (d) The failure of Dealer to continue the operation of its business as a going concern, the insolvency of Dealer, the making of an assignment for the benefit of creditors by Dealer, the filing of any bankruptcy, reorganization, receivership, insolvency, or other state or federal proceeding for the relief of debtors by or against Dealer;
- (e) The determination by The Bank that it reasonably deems itself insecure or believes in good faith that its prospects for payment of any of Dealer's obligations to The Bank or the performance by Dealer of any term or provision hereof is impaired;
- (f) The disclosure by Dealer of this Agreement, or any part hereof, to a Buyer;
- (h) The making by Dealer of any agreement with a Buyer or any settlement concerning amounts due under or otherwise relating to any Contract without The Bank's written consent; or
- (i) The assertion by any Buyer of any claim or defense against The Bank relating to any Contract assigned to The Bank by Dealer, other than any claim or defense arising solely from actions or omissions by The Bank.

10. **Remedies Upon Default.** If any Event of Default described above shall occur, The Bank shall have available to it any or all of the following remedies:

- (a) Dealer shall on demand repurchase from The Bank any or all of the Contracts then held by The Bank. The price Dealer shall pay for each Contract repurchased shall be the gross unpaid balance of the Contract, less unearned finance charges computed under the Rule of 78's, if applicable.
- (b) Dealer will indemnify and hold The Bank harmless from all damages, losses, expenses, and attorneys' fees which The Bank may sustain by reason of (i) any claim, counterclaim or defense which is asserted against The Bank and is related to any Contract assigned to The Bank by Dealer (other than any such claim, counterclaim or defense arising solely from actions or omissions by The Bank), or (ii) any Event of Default as described hereinabove.

The Bank shall also have all of the rights and remedies available to it under applicable law, all of which may be exercised at any time and in any order that The Bank chooses in its sole discretion. All of the remedies described herein shall be cumulative and not exclusive.

- 11. **Cancellation.** This Agreement may be cancelled as to future transactions at any time by either party upon written notice to the other. Such cancellation will not affect the obligations of Dealer then existing under this Agreement or any obligations of Dealer to The Bank concerning any Contract purchased by The Bank prior to the date that the notice of cancellation is given by The Bank or received by The Bank.
- 12. **Miscellaneous.** Failure to exercise any right created by this Agreement shall not operate as a waiver of that right. The Bank may extend the time for payment of any Contract from time to time without the consent of Dealer and without affecting Dealer's obligations to The Bank. Dealer waives presentment, protest, demand, notice of protest, and notice of dishonor or nonpayment of any Contract. If it becomes necessary for The Bank to engage an attorney to enforce any of Dealer's obligations to The Bank under this Agreement, Dealer will pay The Bank's reasonable attorneys' fees.

13. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of Dealer and The Bank and their respective successors and assigns. This Agreement contains the entire understanding between Dealer and The Bank and may be modified only by an instrument in writing executed by authorized agents or officers of Dealer and The Bank, except that the Exhibit hereto may be modified, amended, or substituted by The Bank from time to time in The Bank's sole discretion.
14. **Governing Law; Venue; Arbitration.** The interpretation and enforcement of this Agreement shall be governed by and subject to the internal laws and judicial decisions of the State of North Carolina and such federal law as might be applicable. Any action or case arising under or relating to this Agreement shall be commenced and prosecuted in the state courts of Randolph County, North Carolina or in the federal district court for the Middle District of North Carolina, and the parties hereto irrevocably waive any objection to the venue of any such action, case or controversy being laid in such courts.

If requested in writing by either party hereto, any controversy or claim arising under or relating to this Agreement shall be determined by binding arbitration, in accordance with the provisions of the North Carolina Uniform Arbitration Act (N.C.G.S. §1-567.1, et seq.), and the rules of the American Arbitration Association ("AAA") for the arbitration of commercial disputes. The arbitration shall be conducted in Randolph County, North Carolina, shall be administered by AAA, and shall be commenced within ninety (90) days of the demand for arbitration. The arbitrator may, upon a showing of cause, extend the commencement of the arbitration hearing for up to an additional sixty (60) days. Judgment upon any arbitration award may be entered in any court having jurisdiction over the parties.

15. **Acceptance by The Bank.** This Agreement shall become effective only upon execution and delivery hereof by Dealer and acceptance by The Bank, as evidenced by its signature hereto.
16. **Addenda.** Any exhibits and addenda to this Agreement, including but not limited to the description of "Programs and Policies" of The Bank, are incorporated herein by reference and made a part hereof, with the same effect as if the same were set forth herein at length.

DEALER: _____

By: _____

Title: _____

Date: _____

ACCEPTED:

CommunityOne Bank, N.A.

By: _____

Title: _____

Date: _____