

**AGREEMENT FOR ENTITLEMENT TO REFUND, DEDUCTION OR CREDIT  
PURSUANT TO CALIFORNIA REVENUE AND TAXATION CODE SECTION 6055 AND 18 CCR 1642**

1. **Definitions.** The following capitalized terms shall have the meaning ascribed to each as follows:
  - a. **"Retailer"** means \_\_\_\_\_  
(Dealer's full legal name), located at \_\_\_\_\_  
\_\_\_\_\_ (physical and mailing address)  
  
and all its subsidiaries, affiliates and assignees. The Retailer's California seller's permit is \_\_\_\_\_.
  - b. **"Lender"** means Apex Auto Lending, located at 210 Dahlonge Street ste#201 Cumming, GA 30040, and all of its subsidiaries, affiliates and assigns. If the Lender has not applied for a Certificate of Registration, the Lender agrees that it will apply for a Certificate of Registration no later than the date that it first claims a deduction or refund for bad debts charged off on the Accounts.
  - c. **"Accounts"** means any and all accounts and contracts created between the Retailer and its retail customers with respect to the purchase of tangible personal property which is subject to California sales tax, which accounts are, have been or will be assigned directly from Retailer to Lender.
2. **Blanket Assignment of Retailer's Rights and Interests in Accounts.** Retailer and Lender agree that all of the rights and interests of the Retailer in any and all Accounts, including the right to claim sales tax refunds, deductions or credits, are irrevocably assigned, transferred and relinquished to the Lender.
3. **Entitlement to Tax Refund or Deduction on Accounts.** The Retailer and the Lender agree that the Lender is the party entitled to claim any potential sales tax refunds or deductions as a result of bad debt losses charged off by the Lender on any and all Accounts currently existing or created in the future which have been assigned from the Retailer to the Lender. The Retailer agrees that they have not and will not claim a deduction or refund with respect to any Accounts currently existing or created in the future and hereby relinquishes to the Lender all rights to the Accounts and all rights to claim such deductions or refunds.
4. **Election Pursuant to Section 6055(B)(4) California Revenue and Taxation Code.** Retailer and Lender hereby make an irrevocable election pursuant to section 6055(b)(4), California Revenue and Taxation Code, that designates and entitles Lender (and not the Retailer) to claim the deduction or refund provided under section 6055(b) with respect to any Accounts found worthless and charged off for income tax purposes. The effective date of this election is the date in which the Retailer commences doing business with the Lender.
5. **Payment of Sales Tax.** Retailer represents and warrants that it has reported or shall report the tax on the sale of property with respect to the Accounts.
6. **Confidentiality.** Retailer and Lender acknowledge that the California State Board of Equalization may disclose relevant confidential information to all parties involved in order to evaluate, support and confirm the deductions or refunds claimed pursuant to Section 6055, California Revenue and Taxation Code.
7. **Documentation.** Retailer and Lender agree to furnish any and all documentation required or requested by the California State Board of Equalization that is necessary to support the claim for deduction or refund filed by the Lender.
8. **Term.** This election may not be amended or revoked unless a new election, signed by both the Retailer and Lender is filed with the California State Board of Equalization.
9. **Filing of Election.** Lender and Retailer agree that the Lender shall file this Agreement as an election with the California State Board of Equalization pursuant to Section 6055, California Revenue and Taxation Code.

**Retailer**  
Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Apex Auto Lending  
Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**PERSONAL GUARANTY**

1. I, \_\_\_\_\_ ("Guarantor"), as of the date noted below, absolutely, irrevocably and

unconditionally guarantee to Apex Auto Lending, its successors, transferees, and assigns, (a) the payment in full of any and all sums due Apex Auto Lending, its successors, transferees, and assigns, pursuant to the Dealer Agreement between Apex Auto Lending and \_\_\_\_\_

\_\_\_\_\_ (“Dealer”) dated \_\_\_\_\_ (“Agreement”), pursuant to which Dealer has and/or will offer to sell retail installment sale contracts for the purchase of motor vehicles by consumers (“RISC”), to which this Personal Guaranty (“Guaranty”) forms a part, and agree to pay immediately upon demand of Apex Auto Lending any and all obligations, interest, expenses, charges, reasonable attorney’s fees, and costs of whatsoever nature and kind, which Dealer may be obligated to pay Apex Auto Lending pursuant to the Agreement; and (b) the performance of obligations of Dealer thereunder. I further agree that upon the request of Apex Auto Lending I will at any time and from time to time supply to Apex Auto Lending my personal financial statements and/or last 3 monthly bank statements setting forth in reasonable detail information as required by Apex Auto Lending.

2. Apex Auto Lending will not enter into or continue to review RISCs and associated credit applications pursuant to the Agreement unless Guarantor guarantees payment of all sums owing to Apex Auto Lending thereunder and performance of all terms thereof by Dealer. Therefore, in consideration of the promises and other valuable consideration, receipt of which is hereby acknowledged, and to induce Apex Auto Lending to entered into and maintain the Agreement, Guarantor provides this Guaranty.
3. Guarantor and Apex Auto Lending are at times each referred to herein as a “Party” and collectively as “the Parties.”
4. This Guaranty shall remain in full force and effect until full satisfaction of the Agreement by Dealer; provided, however, that the Guarantor shall not be released from its obligations hereunder so long as any claim of Apex Auto Lending against Dealer which arises out of, or relates, directly or indirectly to, the Agreement is not settled to the satisfaction of Apex Auto Lending. The obligation of Guarantor under this Guaranty shall be in addition to any other obligations Guarantor may have to Apex Auto Lending under any other contracts or agreements.
5. The Guarantor hereby expressly waives (a) notice of acceptance of this Guaranty by Apex Auto Lending, (b) notice of any default or non-performance of Dealer under the Agreement, (c) notice of any modification to the Agreement or any extension of time granted to Dealer, and (d) all defenses, offsets and counterclaims which the Guarantor may at any time have to any claim of Apex Auto Lending against Dealer.
6. The liability of the Guarantor shall in no way be affected or impaired by (a) any amendment, alteration, extension, renewal, waiver, indulgence or other modification of the Agreement; (b) any settlement or compromise in connection with the sums or obligations owed by Dealer to Apex Auto Lending; (c) any subordination of payments under the Agreement to any other debt or claim; (d) any substitution, exchange, release or other disposition of all or any part of the sum or obligations owed by Dealer to Apex Auto Lending; (e) any failure, delay, neglect, act or omission by Apex Auto Lending to act in connection with sums or obligations owed by Dealer to Apex Auto Lending; (f) any Apex Auto Lending advances for the purpose of performing any covenant or agreement of the Dealer, or curing any breach or default; (g) the filing by or against Dealer of bankruptcy, insolvency, reorganization or other debtor’s relief afforded Dealer pursuant to the present or future provisions of the Bankruptcy Code or any other state or federal statute or by the decision of any court; or (h) any other matter whether similar or dissimilar to the foregoing. Guarantor and Apex Auto Lending (by its acceptance of this Guaranty) confirm that the Parties intend that this Guaranty and the obligations of Guarantor hereunder not be a fraudulent transfer or conveyance

for purposes of the federal bankruptcy law, any state insolvency, receivership, fraudulent conveyance or transfer law, or any other applicable federal or state law, therefore, the obligations of Guarantor under this Guaranty at any time shall be limited to the maximum amount as will result in the obligations of such Guarantor not constituting a fraudulent conveyance or transfer.

7. Guarantor is fully aware of the financial condition of Dealer, and delivers this Guaranty based solely on its own independent investigation and does not rely in any way on any representation or statement of Apex Auto Lending with respect to Dealer’s financial condition. Guarantor is in a position to and assumes full responsibility for obtaining any information concerning Dealer’s financial condition, business operations, assets and other matters bearing on the risk of non-payment of the Indebtedness, as Guarantor may deem material to its obligations hereunder.
8. The obligations hereunder are independent of the obligations of Dealer, and a separate action or actions may be brought and prosecuted against the Guarantor whether action is brought against Dealer or

whether Dealer be joined in any such action or actions. The Guarantor further agrees that no invalidity of the Agreement or any obligation thereunder shall affect or impair its liability under this Guaranty. All remedies afforded to Apex Auto Lending by reason of this Guaranty are separate and cumulative remedies. No one of such remedies, whether exercised by Apex Auto Lending or not, shall be deemed to be in exclusion of any of the other remedies available to Apex Auto Lending, and shall in no way limit or prejudice any other legal or equitable remedy which Apex Auto Lending may have in any security or collateral for the indebtedness and the obligations of Dealer. Nothing in this Guaranty is intended or shall be construed to prevent Apex Auto Lending, in the exercise of its sole discretion, from exercising all rights under the Agreement and enforcing the provisions thereof.

9. Apex Auto Lending may, in its sole discretion, proceed against the Guarantor to collect any obligation covered by this Guaranty without first proceeding against Dealer. Upon five (5) days written notice by Apex Auto Lending, the Guarantor shall pay any and all indebtedness, damages, costs and expenses due Apex Auto Lending by Dealer and shall perform any and all duties and obligation of Dealer to Apex Auto Lending.
10. The Guarantor waives any right to require Apex Auto Lending to (a) proceed against Dealer or any other person; (b) proceed against or exhaust any security held from Dealer; (c) pursue any other remedy in Apex Auto Lending power whatsoever.
11. Guarantor also agrees to indemnify Apex Auto Lending and hold Apex Auto Lending harmless against and from all obligations, demands and liabilities, by whomsoever asserted, and against all losses in any way suffered, incurred or paid by Apex Auto Lending as a result of or in any way arising out of, or following, or consequential to Apex Auto Lending transactions with Dealer relating to the Agreement.
12. Any notice to be given to the Guarantor may be sent to the address or number provided below, and all communications so sent, whether by mail, telegraph, facsimile, email, messenger or otherwise, shall be deemed duly given to the Guarantor personally, whether or not actually received. Notices sent by mail shall be deemed duly given on the business day immediately following the date of mailing.
13. The Guarantor agrees that the balance due and unpaid at any time from Dealer to Apex Auto Lending under the Agreement, as shown by the records of Apex Auto Lending, absent manifest error, shall be received as conclusive evidence of the amount of such indebtedness owing by Dealer to Apex Auto Lending as against Guarantor and shall not be disputed or questioned by Guarantor.
14. Guarantor agrees that Apex Auto Lending may (1) transfer or assign the Agreement, and (2) assign this Guaranty and all of its rights, interests and remedies hereunder, to any other person, firm, bank or corporation whatsoever, without notice to or consent by Guarantor. This instrument shall inure to the benefit of Apex Auto Lending and Apex Auto Lending successors and assigns, and shall bind Guarantor, and Guarantor's heirs, executors, administrators, legal representatives, successors, and assigns.
15. Guarantor authorizes Apex Auto Lending to obtain consumer reports or other credit reports of Guarantor as it deems necessary for the review, collection, and enforcement of this Guaranty
16. This Guaranty shall be governed by the laws of the State of California, without regard to conflicts of laws principles, and shall inure to the benefit of Apex Auto Lending, its successors and assigns, and shall be binding on the Guarantor, his heirs and assigns.
17. In the event of litigation or arbitration between the Parties hereto in respect to this Guaranty or any provision hereof, the prevailing party shall be entitled to recover from the other party his or its reasonable attorneys' fees, costs, and out-of-pocket expenses.

#### **11. Binding Arbitration**

- a) This paragraph concerns the resolution of any controversies or claims between the Guarantor and Apex Auto Lending, whether arising in contract, tort or by statute, including but not limited to controversies or claims that arise out of or relate to: (i) this Guaranty (including any renewals, extensions or modifications); or (ii) any document related to this Guaranty (collectively a "Claim").
- b) At the request of the Guarantor or Apex Auto Lending, any Claim shall be resolved by binding arbitration in accordance with the Federal Arbitration Act (Title 9, U.S. Code) (the "Act"). The Act will apply even though this Guaranty provides that it is governed by the law of a specified state.

- c) Arbitration proceedings will be determined in accordance with the Act, the applicable rules and procedures for the arbitration of disputes of JAMS or any successor thereof (“JAMS”), and the terms of this paragraph. In the event of any inconsistency, the terms of this paragraph shall control.
- d) The arbitration shall be administered by JAMS and conducted in Forsyth County, Georgia. All Claims shall be determined by one arbitrator. All arbitration hearings shall commence within ninety (90) days of the demand for arbitration and close within ninety (90) days of commencement and the award of the arbitrator shall be issued within thirty (30) days of the close of the hearing. However, the arbitrator(s), upon a showing of good cause, may extend the commencement of the hearing for up to an additional sixty (60) days. The arbitrator shall provide a concise written statement of reasons for the award. The arbitration award may be submitted to any court having jurisdiction to be confirmed and enforced.
- e) For purposes of the application of the statute of limitations, the service on JAMS under applicable JAMS rules of a notice of Claim is the equivalent of the filing of a lawsuit. Any dispute concerning this arbitration provision or whether a Claim is arbitrable shall be determined by the arbitrator. The arbitrator shall have the power to award attorneys’ fees to the prevailing party pursuant to this Guaranty.
- f) This paragraph does not limit the right of the Guarantor or Apex Auto Lending to: (i) exercise self-help remedies, such as but not limited to, setoff; (ii) initiate judicial or nonjudicial foreclosure against any real or personal property collateral; (iii) exercise any judicial or power of sale rights, or (iv) act in a court of law to obtain an interim remedy, such as but not limited to, injunctive relief, writ of possession or appointment of a receiver, or additional or supplementary remedies.
- g) The filing of a court action is not intended to constitute a waiver of the right of the Guarantor or Apex Auto Lending, including the suing party, thereafter to require submittal of the Claim to arbitration.

**JURY TRIAL WAIVER. BY AGREEING TO BINDING ARBITRATION, THE PARTIES IRREVOCABLY AND VOLUNTARILY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM. FURTHERMORE, WITHOUT INTENDING IN ANY WAY TO LIMIT THIS GUARANTY TO ARBITRATE, TO THE EXTENT ANY CLAIM IS NOT ARBITRATED, THE PARTIES IRREVOCABLY AND VOLUNTARILY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF SUCH CLAIM. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS GUARANTY. THIS WRITTEN GUARANTY REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN AGREEMENTS BETWEEN THE PARTIES.**

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
 Guarantor (Printed Name)

In the presence of:

\_\_\_\_\_  
 Signature

Witness \_\_\_\_\_

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Address

\_\_\_\_\_  
 Address