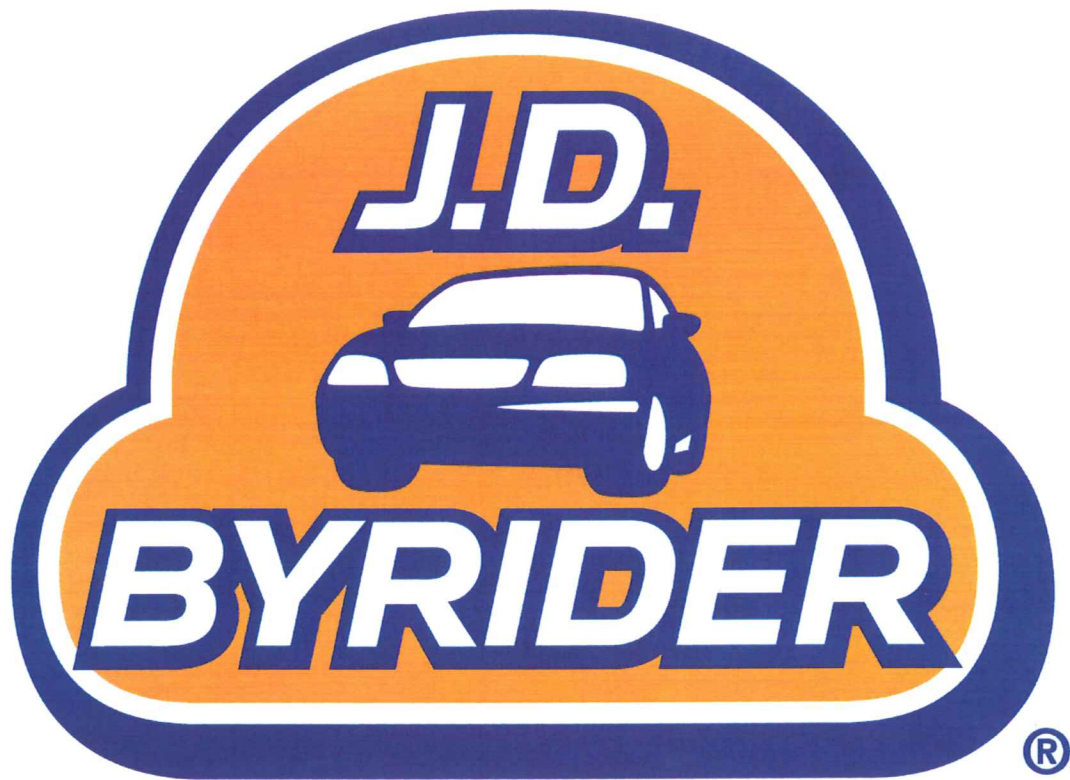


# ***Franchise Disclosure Document***



***Byrider Franchising, Inc.  
12802 Hamilton Crossing Blvd.  
Carmel, IN 46032  
(317) 249-3000***



## FRANCHISE DISCLOSURE DOCUMENT

**Byrider Franchising, Inc.**  
an Indiana corporation  
12802 Hamilton Crossing Blvd.  
Carmel, Indiana 46032  
(317) 249-3000  
[development@jdbyrider.com](mailto:development@jdbyrider.com)  
[www.jdbyrider.com](http://www.jdbyrider.com)

The franchise offered is to operate a used vehicle retail sales and finance business under the name J.D. Byrider and CarNow Acceptance Co. ("CNAC").

The estimated total investment necessary to begin operation of a J.D. Byrider Business ranges from \$675,480 to \$5,210,000 depending upon whether assets are leased or purchased. This includes approximately \$53,617 to \$87,500 that must be paid to the franchisor or its affiliate.

This Disclosure Document summarizes certain provisions of your Franchise Agreement, Area Development Agreement and other information in plain English. Read this Disclosure Document and all accompanying agreements carefully. You must receive this Disclosure Document at least 14 calendar-days before you sign a binding agreement with, or make any payment to, the franchisor or an affiliate in connection with the proposed franchise sale. **Note, however, that no governmental agency has verified the information contained in this Disclosure Document.**

You may wish to receive your Disclosure Document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact: Jeffrey B. Higgins, 12802 Hamilton Crossing Blvd., Carmel, Indiana 46032, (317) 249-3000.

The terms of your contract will govern your franchise relationship. Do not rely on the Disclosure Document alone to understand your contract. Read all of your contract carefully. Show your contract and this Disclosure Document to an advisor, like a lawyer or an accountant.

Buying a franchise is a complex investment. The information in this Disclosure Document can help you make up your mind. More information on franchising, such as "[A Consumer's Guide to Buying a Franchise](#)," which can help you understand how to use this Disclosure Document, is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. You can also visit the FTC's home page at

[www.ftc.gov](http://www.ftc.gov) for additional information. Call your state agency or visit your public library for other sources of information on franchising.

There may also be laws on franchising in your state. Ask your state agencies about them.

Issuance date of this Franchise Disclosure Document: March 27, 2010

## STATE COVER PAGE

Your state may have a franchise law that requires a franchisor to register or file with a state franchise administrator before offering or selling in your state. REGISTRATION OF A FRANCHISE BY A STATE DOES NOT MEAN THAT THE STATE RECOMMENDS THE FRANCHISE OR HAS VERIFIED THE INFORMATION IN THIS DISCLOSURE DOCUMENT.

Call the state franchise administrator listed in Exhibit M for information about the franchisor or about franchising in your state.

MANY FRANCHISE AGREEMENTS DO NOT ALLOW YOU TO RENEW UNCONDITIONALLY AFTER THE INITIAL TERM EXPIRES. YOU MAY HAVE TO SIGN A NEW AGREEMENT WITH DIFFERENT TERMS AND CONDITIONS IN ORDER TO CONTINUE TO OPERATE YOUR BUSINESS. BEFORE YOU BUY, CONSIDER WHAT RIGHTS YOU HAVE TO RENEW YOUR FRANCHISE, IF ANY, AND WHAT TERMS YOU MIGHT HAVE TO ACCEPT IN ORDER TO RENEW.

Please consider the following RISK FACTORS before you buy this franchise:

THE FRANCHISE AGREEMENT AND AREA DEVELOPMENT AGREEMENT REQUIRE YOU TO ARBITRATE (AND IN SOME INSTANCES LITIGATE) WITH US ONLY IN INDIANA. OUT-OF-STATE ARBITRATION OR LITIGATION MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST YOU MORE TO ARBITRATE OR LITIGATE WITH US IN OUR HOME STATE THAN IN YOUR HOME STATE.

THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.

We use the services of one or more FRANCHISE BROKERS or referral sources to assist us in selling our franchise. A franchise broker or referral source is our agent and represents us, not you. We pay this person a fee for selling our franchise or referring you to us. You should be sure to do your own investigation of the franchise.

The effective dates of this Franchise Disclosure Document in the states with franchise registration laws in which we have sought registration appear on the following page.

## BYRIDER FRANCHISING, INC.

### STATE REGISTRATIONS

This Franchise Disclosure Document is registered, on file, exempt from registration, or otherwise effective in the following states with franchise registration and/or disclosure laws:

STATES	EFFECTIVE DATE
California	3/30/10
Florida	4/8/10
Hawaii	4/22/10
Illinois	4/6/10
Indiana	3/27/10
Kentucky	3/27/10
Maryland	3/24/10
Michigan	3/27/10
Minnesota	4/7/10
Nebraska	3/27/10
New York	4/7/10
North Dakota	4/6/10
Oregon	3/27/10
Rhode Island	4/22/10
South Dakota	4/6/10
Texas	3/27/10
Utah	4/22/10
Virginia	6/17/10
Washington	3/19/10
Wisconsin	3/30/10

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APPLICABLE STATE LAW MAY REQUIRE ADDITIONAL DISCLOSURES RELATED TO THE INFORMATION CONTAINED IN THIS DISCLOSURE DOCUMENT. THESE ADDITIONAL DISCLOSURES, IF ANY, APPEAR IN EXHIBIT C.

## ITEM 1

### THE FRANCHISOR AND ANY PARENTS, PREDECESSORS AND AFFILIATES

**A. The Franchisor.** The franchisor is Byrider Franchising, Inc. (referred to in this document as "JDB" or "the Company.") A person who buys a franchise from JDB is referred to in this Disclosure Document as "you." If you are a corporation, limited liability company or other entity, your owners must sign a personal guaranty to fulfill all of your obligations under the Franchise Agreement (Exhibit B).

JDB is an Indiana corporation, incorporated on January 19, 1989. JDB's parent company is J.D. Byrider Systems, Inc. JDB and its parent maintain their principal business address at 12802 Hamilton Crossing Blvd., Carmel, Indiana, 46032.

JDB operates under its corporate name, Byrider Franchising, Inc., and under the service marks "J.D. BYRIDER" and "CNAC CARNOW ACCEPTANCE COMPANY" (the "Marks") and associated logos. JDB's agent for service of process in your state, if applicable, is disclosed in Exhibit M. JDB grants franchises to operate businesses under the Marks. These businesses are referred to in this Disclosure Document as "JDB Businesses"; the JDB Business you will operate is referred to in this Disclosure Document as the "Business." JDB has been offering franchises for JDB Businesses since May 1989. JDB has not offered franchises in other lines of business. JDB does not have other business activities. JDB's related companies, Byrider Sales of Indiana S., Inc. and Byrider Finance, Inc., have operated JDB Businesses since 1995 (see Item 20). No predecessors or affiliates of JDB are required to be disclosed in this Item.

**B. The Franchise Opportunity.** For many years, the independent used-car dealers throughout the United States have primarily retailed five-year and older model automobiles. Historically, the independent used-car dealer's customer has had various credit problems including revolving credit cards, repossessions and judgments, student loan defaults, and bankruptcy. In fact, a significant percentage of the United States population has experienced credit problems at some point. In addition, the market of used-car purchasers continues to increase as the price of new vehicles continues to escalate. These facts, combined with the fact that most conventional lending institutions often deny credit to this market of customers, dictate that the used-car purchaser often has little or no option but to purchase an automobile from an independent used-car dealer who can and will offer non-conventional financing. This type of independent used-car dealer is also known in the industry as "Buy Here, Pay Here."

A majority of the Buy Here, Pay Here dealers, however, are undercapitalized and unsophisticated, making it difficult for them to maintain any consistent earnings or growth over an extended period of time. JDB's goal is to build a franchise system consisting of properly capitalized franchisees who offer quality five-year to ten-year-old automobiles and affordable financing to this growing market of customers. In addition, our goal is to provide these services in clean, well-maintained facilities with a professional, courteous attitude toward the customer.



JDB entered this business because it saw the potential to develop a national franchise system. In addition to building the franchise system, JDB plans to build its own corporate organization through the addition of JDB Businesses over the next several years. Accompanied by proven operating systems, a recognized brand name, and ongoing support from JDB, the J.D. Byrider franchise provides an opportunity for quality and reputable business persons to enter the used-car sales and finance, Buy Here, Pay Here, business.

A JDB Business includes two divisions: the J.D. Byrider sales division and the CNAC finance division which are collectively referred to as a franchise or dealership throughout this document. Note that you own two distinct elements that are operated and funded solely by you. Your J.D. Byrider sales division is a used-vehicle retail sales dealership that uses the unique JDB operating and computer system for purchasing and monitoring vehicle inventory, tracking and following up with potential customers, and selling used vehicles to customers. Your CNAC division reviews credit information submitted by the customer and provides guidance on structuring a customized deal to qualified customers designed to enable the customer to repay the credit extended for the purchase of the used vehicle. Your CNAC finance division also collects the payments made by the customer throughout the term of the contract. In addition, you need to maintain a service facility to provide service and repair work for customers.

JDB Businesses operate using JDB's specialized operational techniques and systems (the "System"). The System consists of unique marketing and sales aids, advertising materials and promotional ideas, and methods for developing, tracking and following up with potential customers. It also includes suggested ways to acquire and control inventory, monitor the quality of sales services, referral and collection techniques, suggestions for record keeping and reporting, and other confidential operating procedures. If you buy a franchise from JDB, you must operate your Business in compliance with the System.

If you purchase more than one franchise, you may enter into an Area Development Agreement and receive an exclusive territory (see Exhibit E).

**C. Competition.** Your Business competes with other used car retail sales companies. These competitors may operate on a national, regional or local level. The primary market for used vehicles with nonconventional financing and related services is the special credit used car buyer. The main competition for a JDB Business is automobile businesses (including new car dealerships and independent used car dealers) that offer special credit financing services.

**D. Government Regulation.** State and federal laws and regulations apply to the business operations of your Business. The Federal Trade Commission ("FTC") has certain laws that apply directly to used car sales and must be followed by your Business. In addition, most states require that you apply for and obtain a license to sell used vehicles. In addition, certain general laws also apply to your Business. For example, state usury laws, advertising laws and federal truth-in-lending laws apply to the operation of the financing element of your Business. Your state law may require

you to obtain a finance license. There may be other general laws that apply to your Business, and you should make inquiries to find out about these regulations.

## **ITEM 2**

### **BUSINESS EXPERIENCE**

#### **James F. DeVoe, Jr.: Chief Executive Officer and Member of Board of Directors**

Mr. DeVoe has been a member of the board of directors of JDB since its inception. From March 2006 to present, Mr. DeVoe has been Chief Executive Officer of JDB. From August 2004 to March 2006, Mr. DeVoe was President of Company Stores.

Mr. DeVoe earned his Bachelor of Science in Business Management from Indiana University School of Business in Bloomington, Indiana, in May 1992. Mr. DeVoe also attended Northwood Institute in Midland, Michigan, where he received an Associate of Arts degree in automotive marketing in 1989.

#### **Steven E. Wedding: President**

Mr. Wedding has been with JDB since September 1991. Mr. Wedding has previously served as Controller, Vice President of Finance, Vice President of Franchise Operations, Executive Vice President of Franchise Operations, and Chief Financial Officer of JDB. He was named President for JDB in March 2006.

Mr. Wedding earned a bachelor's degree in economics from the University of the South in Sewanee, TN, in 1983, and received an MBA from Emory University in Atlanta, GA, in 1985.

#### **William J. Brunner: Chief Financial Officer**

Mr. Brunner has been with JDB since August 2008. Prior to joining JDB, Mr. Brunner was Chief Financial Officer, Executive Vice President and Treasurer of First Indiana Corporation and First Indiana Bank N.A.

Mr. Brunner earned a bachelor's degree in economics from St. Cloud State University in 1981 and a master's of business administration degree from Georgia State University in 1986.

**Michael Maenhout: Sr. Vice President and Chief Information Officer**

Mr. Maenhout has been with JDB in his current position since July 2000. He helped develop the vision that led to the creation of the proprietary Discover operating and accounting system. Prior to joining JDB, Mr. Maenhout worked in the information technology sector of the insurance and financial industries. He has more than 20 years' information technology experience with companies such as The Associates, Indiana Insurance, ING Insurance and Banking, and most recently Liberty Mutual Insurance.

**Jeffrey B. Higgins: Vice President, General Counsel, and Secretary**

Mr. Higgins has been with JDB since August 1991. Mr. Higgins is a member of the American Bar Association and Indianapolis Bar Association. A 1984 graduate of Denison University in Granville, Ohio, Mr. Higgins earned his J.D. from the Indiana University School of Law, Bloomington, Indiana in 1987.

**Brad M. Malott: Vice President, Controller, and Treasurer**

An executive of JDB since August 1994, Mr. Malott has been in his current position since July 1999. Mr. Malott graduated from Ball State University in 1994 with a Bachelor of Science degree in accounting.

**J. Michael Pearce: Vice President Franchise Development**

Mr. Pearce has been with JDB since July 2009. Prior to joining JDB, Mr. Pearce was Vice President Franchise Development for BD's Mongolian Grill. Prior to that, Mr. Pearce has served as Vice President Franchise Development for Dominos Pizza, LLC; Vice President Franchise Development for Sagittarius Brands, LLC; and has over 20 years of franchise development experience.

Mr. Pearce earned a bachelor's degree in finance from Wichita State University in 1987 and received an MBA from Southern Methodist University in 1989.

**Thomas L. Welter: Vice President of Franchise Operations**

Mr. Welter has been with JDB since March 2010. Prior to joining JDB, Mr. Welter was Senior Vice President, National Operations, for 24 Hour Fitness located in San Ramon, California, and has over 20 years of operational experience.

Mr. Welter earned a Bachelor of Science degree in business administration from the University of Nebraska at Lincoln, Nebraska, and is also an alumnus of the Center of Creative Leadership.

### **Shannon Aldridge: Director of Field Operations**

Mr. Aldridge began his Byrider career in 1996 as the Service Manager for a multi-store J.D. Byrider franchisee in Central Indiana, and the following year, he became the General Manager. He was previously a Franchise Consultant for Byrider Franchising and was promoted to his current position of Director of Field Operations in January 2007.

### **Jeff L. Anderson: Director of Franchise Finance**

Mr. Anderson has been with JDB in his current position since January 2004. He was previously Vice President of Franchise Finance for JDB. Mr. Anderson graduated from Purdue University in 1989 with a degree in Management and Finance. He also earned an MBA from Indiana University in 1993.

### **Stephen J. Petersen: Director of Real Estate**

Mr. Petersen has been with JDB in his current position since February 2003. He was previously Vice President of Real Estate Development for JDB. Mr. Petersen is a licensed Real Estate Salesperson in the State of Indiana and graduated from The RCA Institute in 1971.

### **Doug Barney: Director of Training & Compliance**

Mr. Barney has been in his current position since April 2000. He was previously National Director of Training for Budget Car Sales headquartered in Indianapolis, IN. For 27 years prior to working for Budget, Mr. Barney was an Instructional Systems Specialist for the US Army retiring as the Director of Training Support, US Army Soldier Support Institute, Fort Jackson, SC, in March 1998. He holds a B.S. and M.S. in Education from Butler University, Indianapolis, IN.

### **Andrea L. DeVoe: Chairperson of Board of Directors**

Mrs. DeVoe has been a member of the board of directors of JDB since its incorporation and chairperson of the board since March 2006. Mrs. DeVoe graduated from Indiana University, where she earned her B.S. degree in Education in 1966 and then completed initial courses toward an M.S. degree.

### **Patrick S. Pritchard, Sr.: Member of Board of Directors**

Mr. Pritchard has been a member of the Board of Directors since March 1995. He has been involved with the retail car business since 1965. He is currently President of Pritchard Concepts, Inc., a new car dealership consulting firm in Dayton, Ohio. Pritchard Concepts, Inc. has an average client tenure of over 10 years, with some clients retained over 35 years. The company specializes in new car dealership business management systems, extensive compensation packages, new car dealer 20 Groups, etc.

### **Anthony Heyworth: Member of Board of Directors**

Mr. Heyworth has been a member of the board of directors of JDB since May 1999. Mr. Heyworth has been in the past five years and beyond the Treasurer, Director and an Executive Committee member of the Indianapolis 500 Festival, 400 Festival, and a Director of the Indianapolis Convention & Visitors Association, the Children's Museum of Indianapolis, the Economic Club of Indianapolis, the Indianapolis Chamber of Commerce, Indiana Community Business Credit Corp., and the Greater Indianapolis Progress Committee. He is a Division Chairman for United Way of Central Indiana, a Stanley K. Lacy Advisory Board member, and a member of the Corporate Community Council, Colts Community Advisory Council, Community Hospitals of Indiana, the Downtown Indianapolis Association, and Indiana University – Purdue University Indianapolis (IUPUI) Board of Advisors.

Mr. Heyworth retired as Chairman of KeyBank Central Indiana located in Indianapolis, Indiana, and Vice Chairman of KeyBank National Association. In this capacity, Mr. Heyworth was responsible for sales and marketing of financial services in Central Indiana.

### **ITEM 3**

#### **LITIGATION**

State of Ohio, ex rel Jim Petro Attorney General of Ohio vs. Byrider Sales of Indiana S, Inc., Byrider Franchising, Inc., Byrider Finance, Inc., Lakewood Car Credit Company, Lakewood Acceptance Corp., North Shore Auto Sales, Inc., North Shore Auto Financing, Inc., North Shore Phoenix Auto Sales, Inc., North Shore Phoenix Auto Financing, Inc., John Lance Motors, Inc., John Lance Motors Acceptance, Midwest Motors, Inc., MM Acceptance Corp., Magic Motors of Ohio, Inc., Forum Finance, Inc., RWV Sales Corporation, Approved Acceptance Corporation, AMT Auto Enterprise, Inc., Maxcredit Financial, Inc., R & M Auto Group, Inc., R & M Auto Finance, Inc., Rowland Motors, Inc., Rowland Marietta, Inc., JD Sales of Euclid, Inc., JDAC of Euclid, Inc., National Auto Group, Inc., and Motor Car Credit Co., Inc. (Cause No. 05CVH021505). On February 9, 2005, in the Court of Common Pleas, Franklin County, Ohio, the Attorney General of Ohio sought to enjoin us and our Ohio franchisees from violating the Consumer Sales Practices Act and Ohio's motor vehicle titling laws. For purposes of settlement only, a Complaint and Consent Judgment Entry and Order were filed concurrently on February 9, 2005, in the Court of Common Pleas, Franklin County, Ohio. The court enjoined us and our Ohio franchisees from violating the Consumer Sales Practices Act and Ohio's motor vehicle titling laws and ordered us and our Ohio franchisees to take remedial steps for the alleged violations.

Commonwealth of Kentucky ex rel Gregory D. Stumbo, Attorney General vs. James Maguire, J. Marc Maguire, Auto Acceptance Corporation, CNAC of Kentucky, Inc., J. Maguire Enterprises, Inc., Auto Acceptance, LLC, CNAC of Kentucky, LLC, J. Maguire Enterprises, LLC, and J.D. Byrider Systems, Inc. (Cause No. 04CI10575) filed on December 16, 2004, in Commonwealth of Kentucky, Jefferson Circuit Court, Division Nine. Complaint against us and our Louisville franchisee alleging violation of Kentucky's Consumer Protection Act by a pattern of unfair and deceptive sales and financing practices engaged in by our Louisville franchisee, aided and abetted by

unlawful sales and financing techniques developed by us. For purposes of settlement only, an Agreement and Consent Judgment Entry and Order were filed February 2006 in the Commonwealth of Kentucky, Jefferson Circuit Court, Division 7. The court enjoined us and our Kentucky franchisees from violating the Kentucky Consumer Protection Act, the federal Truth in Lending Act, and the federal Magnuson Moss Warranty Act and ordered remedial steps for the alleged violations; we paid \$300,000.00 to the Attorney General as reimbursement, attorneys' fees and other costs of the investigation and litigation. The Louisville franchisee paid \$2.7 million in customer restitution. In addition, the Louisville franchisee agreed to provide a credit of \$500 on each customer account for vehicles purchased during 2000 through 2004. The Louisville franchise is no longer a franchisee.

Auto Acceptance, LLC f/k/a Auto Acceptance Corporation v. Byrider Franchising, Inc. and J.D. Byrider Systems, Inc. (No. 52 114 Y 0061 4 06). On October 16, 2006, Auto Acceptance, LLC, filed an arbitration demand against JDB for failure to renew the franchise agreement. On or about November 2006, JDB filed a counterclaim for injunctive relief and damages to enforce the non-compete provision in the Franchise Agreement and for indemnification. On February 23, 2009, the parties reached an agreement under which JDB would pay \$500,000.00 to Auto Acceptance, LLC.

#### **Actions Against Franchisees in the Fiscal Year Ended December 31, 2009:**

Byrider Franchising, Inc. v. Johnny Popper, Inc. and CNAC, LLC (No. 52 114 00204 09). On or about April 14, 2009, JDB filed an arbitration demand against franchisee Johnny Popper, Inc. and CNAC, LLC for past due royalties. The franchisee counterclaimed in the arbitration seeking rescission of the franchise agreement and return of the initial franchise fee or, in the alternative, damages to be proven at arbitration for breach of contract. On April 27, 2009, Johnny Popper and CNAC, LLC filed a complaint in the Superior Court of New Jersey against JDB alleging that JDB breached the franchise agreement. Johnny Popper, Inc. and CNAC, LLC v. Byrider Franchising, Inc. John Does (1-10) and ABC Businesses (1-10); Superior Court of New Jersey, Camden County-Chancery Division; Case No. C-60-09. The franchisee sought rescission of the franchise agreement and return of the \$50,000 initial franchise fee or, in the alternative, an unspecified amount of damages. This matter was removed to the United States District Court for the District of New Jersey then remanded back to the Superior Court of New Jersey. The franchisee moved to stay the arbitration proceedings initiated by JDB, and JDB moved to stay the Superior Court proceedings pending the outcome of the arbitration. The Superior Court granted JDB's motion and stayed proceedings pending the outcome of arbitration. The franchisee filed a notice of appeal appealing the Superior Court's order staying the court proceedings. The franchisee sought a stay of the arbitration pending its appeal of the order which the Superior Court denied. JDB intends to vigorously prosecute and defend its claims in the arbitration proceeding, and to the extent required, in state court.

Other than these 4 actions, no litigation is required to be disclosed in this Disclosure Document.

#### **ITEM 4**

#### **BANKRUPTCY**

No bankruptcies are required to be disclosed in this Franchise Disclosure Document.

#### **ITEM 5**

#### **INITIAL FEES**

You will pay a \$50,000 lump sum franchise fee when you sign the Franchise Agreement. This initial franchise fee is refundable if JDB receives written notice from you within 60 days from the date of the Franchise Agreement. If you purchase additional franchises, you pay the then-current nonrefundable initial franchise fee for each additional franchise. As of the date of this Disclosure Document, the initial franchise fee for each additional franchise is \$35,000. If you execute an Area Development Agreement, you will pay a nonrefundable \$35,000 initial fee for each additional franchise. The initial franchise fee for additional franchises is subject to change at the discretion of the Company without prior notice. The purpose for which the initial fee will be used is to cover costs such as training materials and programs, research and development, and other costs incurred by the Company.

Other than for JD Byrider Businesses operated by affiliates or other related companies (where the initial franchise fee is and has been waived) the initial franchise fee is and has been uniform.

You pay between \$1,115 and \$25,000 (nonrefundable) for the required computer system to JDB. See Items 6, 7 and 11 for more details and Exhibit G for the Software Services and User Agreement.

You must also purchase a starter kit from JDB for a cost of approximately \$2,500 (nonrefundable). This starter kit contains display boards used to track and display various sales, financing, inventory and other information, and also contains other interior decorations.

**ITEM 6**

**OTHER FEES**

<b>Name of Fee<sup>1</sup></b>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
Royalty	2.5% of Gross Sales <sup>2</sup> , plus 1.0% Gross Receipts <sup>2</sup>	Monthly	<p>The entire amount of the Royalty Fee due for Gross Sales and Gross Receipts combined shall not exceed \$96,000.00 per calendar year for Founder Franchisees, \$120,000.00 per calendar year for Interim Founder Franchisees, or \$144,000.00 per calendar year for Standard Franchisees. In addition, your minimum monthly payment due for Gross Sales must be \$6,000.00.</p> <p>The categories of "Founder Franchisees," "Interim Founder Franchisees," and "Standard Franchisees" are categories designated by the Company based upon when a particular franchisee executed its first franchise agreement with JDB.</p> <p>If you have multiple Business Locations, you may also choose, by serving written notice to JDB, the Multi Location Flat Rate Option, as described in <u>Exhibit B</u> of the Franchise Agreement. If you select this option, you do not pay the royalties described above. To participate, all Business Locations must have at least 51% in common equity ownership and voting control. In order to qualify for this Multi Location Flat Rate</p>



Name of Fee <sup>1</sup>	Amount	Due Date	Remarks
			<p>Option, you must submit documents to substantiate the required common ownership. Your election to use this Multi Location Flat Rate option is for the remaining term of the Franchise Agreement and will not be modified unless you fail to continually operate at least two qualifying J.D. Byrider businesses, or fail to comply with the terms of the Franchise Agreement or any other agreement between JDB and you (or your affiliates), in which case your royalties will revert to those described in the first section of the Remarks shown above.</p> <p>In addition to the fees described above, you will pay a Royalty Fee surcharge of \$100 for every vehicle sold at retail (whether financed or sold for cash) in excess of 75 vehicles per Business Location per calendar month.</p> <p>JDB reserves the right to increase the annual royalty cap, MLFR amounts set forth in Exhibit B of the Franchise Agreement, and the volume surcharge amount by the most recently published National Consumer Price Index-All Urban Consumers – All Items (1982-1984 = 100) as most recently published by the U.S. Department of Labor, or a successor index. Any increase will be uniformly applied to all franchisees under the same form of</p>

Name of Fee <sup>1</sup>	Amount	Due Date	Remarks
			franchise agreement. JDB will notify you in writing on or before January 31 of each calendar year as to any changes in the amounts for such calendar year.
Advertising	\$1,000 plus 2% of Gross Sales <sup>2</sup> to be spent by you in your local market	Monthly	To J. D. Byrider Advertising Group, Inc. In addition, JDB reserves the right to require you to contribute to a National Advertising Fund in an amount to be established when and if this fund is formed by JDB. See Item 11 for information about your required expenditures for local advertising. Franchisor-owned outlets have one vote just like all other franchised outlets on issues before local advertising cooperatives.
Transfer	\$5,000	Before transfer takes place	Covers the cost of training the new franchisee should you sell, transfer or assign your interest in the Business.
Product and Service Purchases	See Item 8	See Item 8	You must purchase certain specified products from JDB or under its standards and specifications as set forth in Item 8.
Interest	As accrues at the highest legal rate	When past-due fees exist	All Royalty Fees, Advertising Fees, and other amounts you owe to JDB bear interest after the date these Fees are due.
Meeting Fees	Pro rata share of actual cost of event	Upon billing by JDB	Reimbursement for expense of meals, meeting rooms, etc.
Limited Warranty/Extended Service Contract Administrative Fee	Vary under the circumstances	Upon billing by JDB	Optional program to administer limited warranty/customer service contract communication.
Loan by Phone/Internet Lead Fee	Vary under the circumstances	Upon billing by JDB	Optional program to generate leads via toll-free number/Internet.
Attorneys' Fees	Vary under the	As incurred	If you or JDB files a suit to

<b>Name of Fee<sup>1</sup></b>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
	circumstances		enforce a provision of the Franchise Agreement, the losing party pays the prevailing party's reasonable attorneys' fees.
Insurance	Vary under the circumstances. Include policy costs plus JDB's expenses.	As incurred	If you do not obtain the required insurance coverage as stated in the Franchise Agreement Article XII, JDB may secure coverage for you and charge you the insurance costs and JDB's expenses.
Indemnification <sup>3</sup>	Cost of claims and of defending claim vary depending on the circumstances	Upon notification by JDB	You indemnify JDB and hold JDB harmless from and against all claims and costs of defending claims that arise, either directly, or indirectly, from the operation of your Business.
Penalty for Hiring JDB's or Other Franchisee's Employees	Vary under the circumstances	Upon the date you hire such employee	If you hire a JDB employee or an employee of another franchisee either during or within 1 year of employee's termination of JDB employment, then you will pay a fee equal to 3 times the annual income (salary plus bonus) of the employee involved. See Franchise Agreement 18.5.

<b>Name of Fee<sup>1</sup></b>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
Penalty for Underpayment of Fees	Vary under the circumstances	Upon an audit showing a discrepancy between your books and your royalty payments to JDB	If an audit shows no discrepancy, JDB pays the cost of the audit. If discrepancy is shown, you pay the cost of the audit. You also immediately pay JDB the amount owed plus interest at the highest rate allowed by law. If the discrepancy shows that you underpaid JDB by more than 2%, and JDB concludes that the underpayment was intentional or grossly negligent, you promptly pay JDB an amount equal to 3 times the Royalty Fees and/or the Advertising Fees that are due, as well as interest at the highest rate allowed by law and all costs and expenses related to the audit by JDB representatives including salaries, travel costs, room and board and travel fees.
Training, Retraining, and/or Training	Vary under the circumstances	When services are rendered	Various courses are offered. You and/or your employees may undergo additional retraining at JDB's designated training facility. You pay only for costs such as food, hotel and travel.
Computer System-Related Third Party Vendor Fees	Vary under the circumstances	When services are rendered	Third party vendors, from time to time, charge maintenance fees, for which JDB will bill you.
Customer Service Survey	Vary under the circumstances	Monthly	JDB reserves the right to conduct a survey or to employ an outside company to conduct a consumer opinion survey on your Business and other JDB Businesses. You and any other Businesses involved with the survey pay for all associated costs.

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1/ All fees are payable to JDB and are uniform to all franchisees receiving this disclosure document. The fees are non-refundable unless otherwise stated. During the term of the Franchise Agreement, JDB may offer optional services not currently contemplated for which JDB may charge a fee. JDB reserves the right to charge you a computer fee or an accounting fee for analyzing and summarizing your accounting information and/or for providing financial reports and related reports or services. In addition, if JDB modifies the System, you pay for those required modifications.

2/ "Gross Sales" means the full purchase price of all vehicles sold at retail (whether financed or sold for cash), including charges for extended service agreements, documentary fees, and all other fees or charges which accompany the sale, minus overallowances given on trade-in vehicles. For example, the customer's purchase price of the vehicle is \$10,000 and the customer has a trade in with an actual cash value of \$1,000 and assuming no extended service agreement or other charges. However, the Franchisee offers \$1,500 for the trade in. The "overallowance" is the amount offered of \$1,500 less the actual cash value of \$1,000 equaling \$500. Therefore, "Gross Sales" in this example is the full purchase price of \$10,000 less the overallowance of \$500 which equals \$9,500. Not included in "Gross Sales" are receipts from "wholesaled vehicles." Wholesaled Vehicles are defined as vehicles sold for resale and for which no sales tax is required. "Gross Sales" is fully described in Franchise Agreement Article 3.6.

The term "Gross Receipts" shall mean all monies received, such as payments from customer accounts, deferred down payments, payments from bulk sale of customer accounts, and including all other amounts received, except cash down payment received prior to delivery of the vehicle.

3/ You must indemnify JDB for any claims or costs incurred by JDB in defending claims against your Business. Likewise, JDB will indemnify you for claims against you and/or your Business that arise from your authorized use of the Marks or from JDB's gross negligence or willful misconduct or from any mandatory specification, standard or procedure contained in the Manual that is determined to be unlawful. As long as you give timely notice of these claims to JDB, have complied with the Franchise Agreement and JDB has participated in the proceeding as it deems necessary, JDB pays the reasonable costs that arise from the action.

No other fees or payments are to be paid to JDB, and JDB will not impose or collect any other fees or payments for any third party, except as above stated.

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**ITEM 7**

**YOUR ESTIMATED INITIAL INVESTMENT**

<b>Expenditures</b>	<b>Estimated Amount or Estimated Low-High Range*</b>	<b>When Payable</b>	<b>Method of Payment</b>	<b>To Whom Paid</b>
Initial Franchise Fee (1)	\$50,000	Upon Execution of Franchise Agreement (Refundable if you notify JDB within 60 days from execution of Franchise Agreement)	Lump sum	JDB
Starter Kit (2)	\$2,500	As arranged (Nonrefundable)	Lump sums as incurred	JDB
Real Estate and Improvements (3)*	\$30,000-\$3,000,000	As arranged (Nonrefundable)	Lump sum	Suppliers
Furniture, Fixtures and Equipment (4)*	\$1,580-\$50,000	As arranged (Nonrefundable)	Lump sums as incurred	Suppliers
Service Center Equipment (5)*	\$2,371-\$75,000	As arranged (Nonrefundable)	Lump sums as incurred	Suppliers
Signs and Awnings (6)*	\$2,529-\$80,000	As arranged (Nonrefundable)	Lump sums as incurred	Approved suppliers
Security Deposit for Property and Utilities (7)	\$1,000-\$7,500	As arranged (Refundable as arranged with lessor, utility)	Lump sums as incurred	Lessor, utility companies
Opening Inventory of Vehicles (8)	\$50,000-\$350,000	As incurred (Nonrefundable)	Lump sums as incurred	Suppliers
Advertising and Grand Opening (9)	\$30,000	As incurred (Nonrefundable)	Lump sum	Suppliers as incurred
Computer/ Phone/Security Systems (10)*	\$4,500-\$60,000	Upon installation (Nonrefundable)	Lump sum	JDB

<b>Expenditures</b>	<b>Estimated Amount or Estimated Low-High Range*</b>	<b>When Payable</b>	<b>Method of Payment</b>	<b>To Whom Paid</b>
Bonds, Licenses and Business Permits (11)	\$1,000-\$5,000	As incurred (Nonrefundable)	Lump sums as incurred	Agencies
Additional Funds – 3 months IMPORTANT, see Note (12)	\$500,000-\$1,500,000	As incurred (Nonrefundable)	Lump sums as incurred	Agencies
<b>TOTAL ESTIMATED INITIAL INVESTMENT (13)</b>	<b>\$675,480-\$5,210,000</b>			

\*The low figure for the Real Estate and Improvements represents 3 months of rent payments on an improved property of \$10,000 per month. The low figures for "Furniture, Fixtures and Equipment," "Service Center Equipment," "Signage and Awning" and "Computer System" represent the first three months' payment for leasing. The high figures represent the full purchase price of these items at the high range estimated investment. The decision whether to lease, mortgage or to purchase these requirements is a business decision you must make depending on your financial resources and financing arrangements you make. Whether you receive adequate financing depends upon, among other factors, your overall creditworthiness. JDB may assist and advise you on financing matters with third parties for leasing or purchasing initial items or otherwise, but JDB is not obligated to do so.

**Explanatory Notes** (The following numbered items correspond to the numbered items on the previous page.)

1. The initial franchise fee is described in Item 5 of this Disclosure Document.
2. The starter kit contains monitoring, control boards, and other internal decorations.
3. You may lease or acquire the property on which the franchise is to be located. The land cost for acquiring this property is estimated to range from \$200,000 to \$1,000,000, but cost varies and could easily and substantially exceed this range depending on the site. Variables such as property cost, location, and cost of construction make it difficult to estimate accurately the rent or purchase cost of the real

estate until the site is selected. The ideal property is at least 1.5-2.0 acres (65,340 - 87,120 square feet).

You may be required to make certain improvements to the Business location, and you bear the costs of these improvements. For example, locations should be paved, curbed and landscaped.

The building contains the required J.D. Byrider sales office, CNAC finance office, and the J.D. Byrider service center. The building is approximately 5,000-10,000 square feet.

The service center is usually a four to twelve bay facility for the purpose of repairing and reconditioning the vehicles before and after the sale.

4. Office furniture and equipment includes furnishings and office decorations, copy machines, fax machines, telephones and other customary office supplies for both the J.D. Byrider sales and the CNAC finance offices. The low figure assumes a lease and a cost equal to 50% of the high figure cost. (5-year lease with an effective interest rate of 10%)

5. The service center has three to twelve lifts and other equipment, such as a brake lathe, tire balancer, key cutter, etc., which total approximately \$37,500-\$75,000. The low figure assumes a lease and a cost equal to 50% of the high figure cost. (5-year lease with an effective interest rate of 10%)

6. You must use signs and awnings with the trademarks that conform with JDB's requirements and local zoning laws. The low figure assumes a lease and a cost equal to 50% of the high figure cost. (5-year lease with an effective interest rate of 10%)

7. Lessor and utility companies may require that you place a deposit before occupation of the business location and before installing telephone, gas, electricity and related utility services. These deposits may be refundable in accordance with the agreements made with the lessor and utility companies. This cost may vary depending upon your local vendors.

8. The amount invested in an initial supply of vehicle inventory depends upon the actual sales volume desired and the cost of vehicles in specific markets. The high figure assumes outright purchase of a high inventory figure, whereas the low figure assumes floor plan financing of 75% of the \$200,000 low figure for inventory cost.

9. You must obtain JDB's approval for promotions and advertising programs for your grand opening. In addition, you must pay the advertising fees.

10. The JDB computer system includes proprietary software. The standard hardware configuration for linking to the JDB computer system is \$1,115 to \$25,000. In addition, you will also pay for the cost of third-party maintenance for hardware and software. A multi-line phone system will be required to support



customers. A security system will also be necessary, including a safe. The low figures assume a lease and a cost equal to 50% of the high figure cost. (5-year lease with an effective interest rate of 10%)

11. Regulatory agencies in each state may require you to obtain a dealer's license, finance license, bond, zoning licenses and other business permits.

12. This amount reflects the required working capital for the first three months you operate your business. The majority of the working capital is required to fund your CNAC finance division. The amount required during these three months varies, generally between \$500,000 and \$1,500,000, depending mostly upon the average number of vehicles sold each month and the terms negotiated with any lenders. Your CNAC finance division will require between \$1 million and \$7 million in working capital as you grow your receivables portfolio over the first three years of operation. This is necessary to allow your CNAC to fund the credit extended to each customer who buys a used vehicle from your J.D. Byrider. Your working capital requirements will be affected by your sales volume and customer deal structure.

13. JDB relied upon 20 years of business experience to compile these estimates. You should review these figures carefully with a business advisor before making any decision to purchase the franchise. JDB does not offer financing directly or indirectly for any part of the initial investment; although assistance may be provided to obtain financing, JDB is not obligated to do so. The availability and terms of financing depends on many factors, such as the availability of financing generally, your creditworthiness, collateral you may have and lending policies of financial institutions from which you may request a loan.

## **ITEM 8**

### **RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES**

**A. Proprietary Computer Software and Starter Kit.** You must license JDB Proprietary Computer Software from JDB and enter into a Software Services and User Agreement (see Exhibit G) with JDB for ongoing service and support to the Proprietary Software and all other components of the computer system. The computer system is only available from JDB. JDB does not provide lease packages for its Proprietary Software, but may provide you with a list of third parties that offer lease packages for the entire computer system as described in Item 11. Any financing you arrange for the purchase or lease of the computer system may not contain terms that encumber the Proprietary Software in any way. Under no circumstances will the ownership rights to the Proprietary Software change from JDB to you or to a third party.

You must also purchase a starter kit from JDB for a cost of approximately \$2,500. This kit is assembled to facilitate the start-up phase and general operation of your Business. The starter kit contains monitoring, control boards, and other internal decorations. You may not purchase this item from any other supplier than JDB. In the year ended December 31, 2009, JDB's revenue from franchisees' purchase of the

starter kit was \$8,671 which represents 0.06% of the company's total revenue of \$15,716,000. The cost of the entire starter kit purchased in accordance with specifications represents less than 1% of your total purchases of establishing your store.

You are not required to purchase or lease any other goods from JDB or JDB's designated sources other than the Proprietary Software, associated computer equipment as described in Item 11 of this Disclosure Document and the starter kit.

**B. Compliance with Specifications.** JDB provides you with specifications for interior and exterior signs, awnings and decorating accessories that will be required for the Business. You may purchase or lease original and replacement signs and decorating materials and services that meet these specifications from any source. If you propose to purchase or lease any sign or decorating materials not approved by JDB, you must first notify JDB. JDB may then require you to submit sufficient specifications, photographs, drawings and/or other information and samples to determine whether the sign or decorating materials meets JDB's specifications. JDB is entitled to reasonable compensation and reimbursement of all expenses it incurs to carry out these determinations, including costs of analysis and testing. JDB advises you within a reasonable time whether your proposed sign or decorating materials meet its specifications.

**C. Approved Suppliers.** JDB may suggest sources that will supply promotional materials, agreements, signs, stationery, and other items necessary for you to operate the Business. The suggested supply source for any item may be either JDB or a third party. For your benefit, JDB negotiates purchase terms, including favorable price terms, with the approved suppliers. You must purchase certain supplies from sources approved by JDB.

If you want to purchase products or services from sources not recommended or approved by JDB, you must submit samples and specifications to JDB for testing to determine whether the products or services comply with JDB's standards and specifications. You must obtain JDB's prior written approval before you use or sell any unapproved products or services. JDB will not unreasonably withhold approval and will notify you within 30 days of your request that it has approved or rejected your proposed vendor or supplier. If JDB rejects the proposed vendor or supplier, it will give you the reasons for rejection.

Except for the computer system and starter kit, there are currently no goods, services, supplies, fixtures, equipment, inventory or real estate for establishing your Business that you must purchase or lease from JDB. However, to maintain the quality of goods and services provided by JDB Businesses and the reputation of the System, JDB periodically may require you to purchase or lease other services, equipment, products, materials and supplies that meet specifications and, for some items, JDB may require you to purchase or lease from suppliers that JDB approves or designates. There currently are no suppliers of products, services, equipment, supplies or materials

that you must or may purchase in operating the Business in which any officer identified in Item 2 owns an interest.

During our fiscal year ending December 31, 2008, neither we nor any of our affiliates derived revenue or other material consideration from required purchases or leases of products or services from designated or approved suppliers by franchisees. Except as described above, we do not expect that we or any affiliate of ours will derive revenue in the future as a result of your purchases or leases in accordance with our specifications or standards or from approved suppliers. We provide no material benefits to franchisees based on their use of approved suppliers.

Your purchases from designated or approved suppliers (including us and our affiliates) or in accordance with our standards and specifications are estimated to be 95% to 100% of your total purchases in establishing the Business, and approximately 95% to 100% of your on-going purchases in operating the Business.

You should be aware that there may be price increases in any of the items you must purchase from suppliers and other third parties. JDB does not know of any pending price increases, but JDB cannot guarantee that increases will not occur.

**D. Insurance required.** To standardize insurance and to afford you, JDB and your customers protection against insurable risks, JDB requires minimum standards and limits for certain types of insurance coverage required to be purchased by you.

You purchase at your sole expense and maintain in effect at all times the greater of the insurance coverage required by the landlord for the franchised location or the categories listed in Article XII of the Franchise Agreement of insurance coverage through licensed and admitted insurance companies acceptable to JDB. See Article XII of the Franchise Agreement for details.

## ITEM 9

### FRANCHISEE'S OBLIGATIONS

This table lists your principal obligations under the franchise and other agreements. It helps you find more detailed information about your obligations in these agreements and in other items of this Disclosure Document.

	<b>Obligation</b>	<b>Section in Franchise Agreement</b>	<b>Item in Disclosure Document</b>
a.	Site selection and acquisition/leases	Articles 6.4 and 7.3	Items 7 and 11
b.	Pre-opening purchases/leases	Articles 7.2, 7.3 and 9.5	Item 7
c.	Site development and other pre-opening requirements	Articles 7.2, 7.4 and 9.5	Item 11
d.	Software license requirements	Article 9.4 and Exhibit G	Item 11 and Exhibit G
e.	Initial and ongoing training	Articles 6.1 and 6.8	Items 6 and 11
f.	Opening	Article 7.4	Items 5, 7, and 11
g.	Fees	Article 9	Items 5, 6 and 7
h.	Compliance with standards and policies/Operating Manual	Articles 6.2 and 6.3	Item
i.	Trademarks and proprietary information	Article 8	Items 11, 13 and 14
j.	Restrictions on products/services offered	Article 7.7	Items 8 and 16
k.	Warranty and customer service requirements	Article 7.17	Item 6
l.	Territorial development and sales quotas	Articles 4.3 and 4.4	Item 12

	<b>Obligation</b>	<b>Section in Franchise Agreement</b>	<b>Item in Disclosure Document</b>
m.	Ongoing product/service purchases	Article 7.7	Items 6, 8 and 16
n.	Maintenance, appearance and remodeling requirements	Articles 7.5 and 7.15	Item 8
o.	Insurance	Article 12	Item 6
p.	Advertising	Article 10	Items 6 and 11
q.	Indemnification	Article 11.3	Items 6, 11 and 13
r.	Owner's participation/management and staffing	Articles 6.1, 6.6, 6.8, 6.9 and 7.11	Item 15
s.	Records/reports	Articles 13.1 and 13.2	Item 11
t.	Inspections/audits	Article 13.3	Items 6 and 11
u.	Transfer	Article 14	Items 6 and 17
v.	Renewal	Articles 5.2 and 5.3	Item 17
w.	Post-termination obligations	Article 17	Item 17
x.	Non-competition covenants	Article 18	Item 17
y.	Dispute resolution	Article 19	Item 17

### **ITEM 10**

### **FINANCING**

JDB does not offer direct or indirect financing. JDB does not guarantee your note, lease or obligation.

### **ITEM 11**

### **FRANCHISOR'S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS, AND TRAINING**

**Except as listed below, JDB need not provide any assistance to you.**

#### **A. Pre-Opening Obligations.**

Before you open the Business, JDB provides:

1. **Site Approval.** JDB approves your Business location if the location is considered appropriate. JDB considers several factors when it accepts or rejects a proposed site including demographics of the location, accessibility, daily traffic

counts, level of competition, rent and construction costs and whether there is sufficient residential and commercial backup to support the Business. JDB will provide you with written notice of approval or disapproval of the proposed site within 30 days after receiving your written proposal. In the event your submitted site is not approved, you will need to submit alternate sites until one is approved. You are responsible for acquiring a suitable site for your Business. (Franchise Agreement - Article 6.4)

Upon the written approval of the proposed Business location, you will execute a lease (if the Business location is to be leased) or a binding agreement to purchase the site, with terms that have been approved by JDB. JDB's approval of the lease may be conditioned upon acceptable terms that may include: (i) a provision that requires the lessor to provide JDB with a copy of any written notice of deficiency under the lease at the same time a notice is sent to you and which grants JDB the right, in its sole discretion, to cure any deficiency under the lease if you do not do so within 30 business days after the expiration of the period you are given under the lease to cure the default; (ii) a provision that gives you the right to display the Marks in accordance with the Manual or JDB policies, subject only to the provisions of applicable law; (iii) a provision that grants JDB the right to replace you as lessee under the lease and assume your obligations if the Franchise Agreement expires or is terminated for any reason; and (iv) a provision that the Business location be used only for the operation of a Business.

The typical length of time between the signing of the Franchise Agreement or the first payment of consideration for the Businesses and the opening of the Businesses is about 180 to 360 days. Factors that affect this length of time include the time it takes to arrange financing, meet local ordinances or community requirements and complete delivery of equipment.

2. **Approved Specifications.** As discussed in Item 8, JDB identifies the specifications for the building, equipment, furnishings, decor, layout and signs required to open and operate the Business, assists with layout and approves development plans and provides you with a list of approved suppliers and sources for supplies. (Franchise Agreement - Article 6.2).

3. **Operations Manual.** JDB loans to you one set of JDB's Manuals. (Franchise Agreement - Article 6.3) The Tables of Contents of the Manuals are attached to this Disclosure Document as Exhibit H.

4. **Training.** JDB provides training for your personnel, except for mechanics and detailers, and provides guidance with staffing and inventory acquisition. (Franchise Agreement - Article 6.1). This training is described in detail later in this Item.

5. **Computer System Installation.** JDB installs and provides training on the JDB computer system that you will purchase. (Franchise Agreement - Article 13.2). The computer requirements are described in detail below. You may be required to update or upgrade the computer hardware only, no more than once per two-year period and at a cost not to exceed \$25,000 in any two-year period.

6. **Review of Location Lease.** JDB guides you in lease analysis and/or purchase. (Franchise Agreement - Articles 6.4 and 7.3).

**B. Post-Opening Obligations.**

During your operation of the Business, JDB provides:

1. **On-Site Assistance.** JDB gives you on-site assistance for your first Business. During the first week that Business is open, JDB will, at its own expense, provide at least one JDB representative to you at your Business location to facilitate the opening of the Business. The number of days of this on-site assistance visit varies. On-site assistance for opening of additional Businesses is provided if JDB considers it appropriate and is provided at JDB's expense. If you request additional assistance in opening your Business, and JDB considers it appropriate, JDB provides assistance beyond the assistance described above. (Franchise Agreement – Article 6.6)

2. **Grand Opening Promotion Assistance.** JDB may give you guidance in marketing and promotions for the Grand Opening within the first three months that you operate your Business. (Franchise Agreement - Article 6.7).

3. **Periodic Inspection.** Periodically, JDB inspects the Business as JDB considers necessary, and JDB gives you advice about operating your Business. JDB also provides information to you about changes and modifications to the System and/or the Manual, guides you in advertising and marketing and gives you forms for required reports you must submit to JDB. Periodically, at your request, JDB's staff at its principal office will provide you with guidance. You should expect to be audited twice annually to ensure compliance with J.D. Byrider operations standards; audits are designed to assess compliance with state and federal laws and to review those practices that affect the Byrider brand (Franchise Agreement - Article 6.9).

Periodically, as JDB considers necessary, JDB inspects your supplies, merchandise, methods of service and merchandising and speaks with you and your employees to ensure you are complying with the Franchise Agreement and the standards, established for the System (Franchise Agreement - Article 6.10).

4. **Approval of New Products and Services.** JDB considers for approval the products and/or services you submit for approval for use in your Business. (Franchise Agreement - Article 7.7).

5. **Indemnification.** JDB will indemnify you against claims and for reasonable costs associated with defending or participating in a suit or proceeding that arises from your authorized use of the marks or from JDB's gross negligence or willful misconduct or from any mandatory specification, standard or procedure contained in the Manual that is determined to be unlawful. To be indemnified and held harmless by JDB, you must give JDB timely notice of any suits or proceedings as described above that are pending against you, and you must be in compliance with the Franchise

Agreement. JDB has the right to participate in and control the suit, proceeding or litigation to the extent JDB considers necessary. (Franchise Agreement - Article 11.3).

6. **Advertising Requirements, Guidance and Approval.**

Periodically JDB provides you with advertising plans, materials and advice on advertising, promotional and public relations matters. (Franchise Agreement - Article 6.9 E).

In addition, JDB has the right to approve or disapprove of all advertising and promotional materials you propose to use. (Franchise Agreement - Article 10.1) Advertising is explained in more detail below.

7. **Annual Meetings.**

JDB holds one to three annual meetings at which you must be represented. JDB notifies you of the dates and locations of these meetings, and you are responsible for your own transportation and traveling expenses and your pro rata share of the meeting expenses that are associated with attending these meetings. JDB reserves the right to increase or decrease the number of meetings. (Franchise Agreement - Article 6.11).

**C. Advertising Funds.** Advertising through your efforts is placed in television, radio, magazine and newspaper media. You will participate in advertising in local and regional areas. In the future, JDB may establish, maintain and administer a National Advertising Fund to expand advertising efforts to national coverage. When and if JDB creates this fund, you must contribute to the fund as required by JDB. JDB may conduct its own advertising and may employ advertising agencies to assist in promotions. You will be permitted to use and publish advertising materials only with JDB's approval. In addition, you may not alter approved advertisements except to fill in local identification information.

You must, if requested by JDB, join a local advertising co-op, whose membership is defined by the region of your franchised location, and make contributions to that co-op as required by the co-op's by-laws. JDB is responsible for administration of the co-op, which must operate from written governing documents that are available for review by you. As well, periodic financial statements are prepared and available for review by you. JDB has the power to require a co-op be formed, changed, dissolved or merged. Contributions you make to a co-op will be credited toward the required advertising expenditures as discussed in Article X of the Franchise Agreement and Item 6 of this Disclosure Document. As part of a co-op, you will participate in voting on how to use the funds contributed by all members. You must spend two (2%) percent of your Gross Sales on co-op or local advertising. However, for the first 12 months of business, you will only be required to spend one and one half (1.5%) percent of Gross Sales. JDB reserves the right to raise this percentage to three (3%) percent of your Gross Sales in the future. Advertising fees must be paid in the above amounts for each Business location. All advertisements must receive JDB's approval before publication. In addition, JDB retains all ownership rights and title to all advertising materials and before publication must approve your advertisements that are not generated by JDB.



In addition to the local advertising requirement, you must pay \$1,000 per Business Location per month to J.D. Byrider Advertising Group, Inc. (the "Ad Group"). An Ad Group Board of Directors consisting of 6 elected JDB franchisees and 3 appointed JDB representatives determines how to spend the contributions to the Ad Group. These funds are typically spent to produce advertising materials. These funds are not used to place advertisements in any given market. JDB receives reimbursement for any expenses incurred with the development of advertising and promotional materials including 1) hotel, travel, and meals, 2) JDB employee time, and 3) any other reasonable related expense.

In the past fiscal year, the Ad Group made expenditures as follows: Production (41% of funds); Administrative Expenses (28% of funds); Media Placement (0% of funds); Promotional Products (29% of funds); and Market Research (2% of funds). The Ad Group is not required to spend any particular amount on advertising in your area or territory. Any fees that are not spent in the year that they are contributed to the Ad Group are carried over to the next year. No part of the Ad Group is used to solicit franchise sales. Upon request, you may obtain a financial accounting of the advertising fund.

**D. Computer System.** The JDB computer system is made up of three components: 1) JDB Proprietary Software, 2) off-the-shelf (third party) software, and 3) local and centralized hardware. You must license and use the JDB computer system necessary to operate your day-to-day business (Franchise Agreement - Article 9.4) and maintain required records (Franchise Agreement - Articles 13.1 - 13.2). JDB will have independent access to the data collected in your files.

The cost of the computer system at each franchise location is between \$1,115 and \$25,000 and is purchased from JDB. These fees are based on current cost figures and are subject to change caused by enhancements in hardware and software technology, communications and maintenance costs, and computer system design.

JDB owns the Proprietary Software. JDB has the sole right to service, update and maintain the Proprietary Software. JDB has the right to immediately deny access for specific causes, such as viruses, hackers, or performance degradation. JDB maintains a specific level of standards for networks, security, software, hardware, and other features that all franchisees must be in compliance with. These standards are required to facilitate the common services provided by JDB, and to minimize disruptions or security concerns throughout the franchise community.

The JDB Software consists of programs specially designed to the needs of your Business, and it includes programs that keep track of inventory and vehicle repairs, store customer information, assist in processing financing to customers, perform credit checks and record accounting transactions. JDB will have unlimited independent access to the information stored in your files. (Franchise Agreement - Article 13.2).

JDB requires some very specific equipment, networking, and software to provide its services. At the time of your purchase, you will be informed of the items that are

mandatory and required, and those items that are recommended but can be altered to meet your needs. You should be aware that future changes in computer technology, communication technology, software design, third party vendor technology or business practices, and JDB's acquisition of upgraded or new equipment may alter these requirements over time, and are subject to change.

During many years of servicing franchisees, these requirements have been designed to ensure a specific level of quality and capabilities are provided by our franchisees to their customers.

JDB may also require that you purchase certain hardware, networking devices, software, and support agreements directly through JDB. This is required only where there is a reasonable support requirement, such as firewall service agreements that are not allowed to lapse.

Each franchisee is required to utilize qualified local technicians that can support the items that each franchisee uses. JDB reserves the right to replace technical staff at your expense if issues and concerns jeopardize the quality and timeliness completing these items.

JDB does not represent or warrant to you, and expressly disclaims any warranty, for the computer system. JDB has no obligation or liability for any expense or loss you may incur from using the software or for consequential, exemplary or incidental damages. JDB makes no other warranties, express or implied, and expressly excludes all warranties of merchantability and fitness for particular purpose. Further, you are responsible for the accuracy and legal compliance of all consumer transaction documents for your business.

**E. Training.** Employees of the franchise who hold management positions must attend training specific to their positions. This requirement applies to those managers who are initially hired and replacement personnel. Employees in non-management positions are encouraged to attend formal training, but the requirement is left to the discretion of the franchisee. Except for third party training vendors where a fee may be charged, all JDB training is free. However, the franchisee is responsible for travel and living expenses while employees are in a training mode. Formal training courses are conducted in Carmel, Indiana, at JDB's corporate office or selected regional sites. JDB representatives provide additional in-store training in conjunction with the business opening. The length of these visits varies. JDB offers training on a frequent, but periodic, basis at the JDB corporate office. On-line training is also available through Byrider Digital University located on ebyrider.com, Byrider Franchising intranet. The formal courses offered are as follows:

## TRAINING PROGRAM

<b>Subject</b>	<b>Hours of Classroom Training</b>	<b>Hours of On-the-Job Training</b>	<b>Location</b>
Sales Associate	8	None	Our Carmel, Indiana headquarters and/or regional training location JDB selects
Sales Management (required for Sales Manager; recommended for other managers) -- Sales Associate training prerequisite for Sales Management course	8	None	Our Carmel, Indiana headquarters and/or regional training location JDB selects
CNAC Operations (required for Finance managers; recommended for other managers)	16	None	Our Carmel, Indiana headquarters and/or regional training location JDB selects
Collections (required for Finance managers; recommended for Sales Managers and Collectors)	16	None	Our Carmel, Indiana headquarters and/or regional training location JDB selects
Advanced Accounting Systems Education (required for Office Managers/Accountants ; recommended for other managers). Accounting Systems Education Byrider Digital University course prerequisite for this course.	24	None	Our Carmel, Indiana headquarters and/or regional training location JDB selects

Subject	Hours of Classroom Training	Hours of On-the-Job Training	Location
Service Management (required for Service Managers; recommended for sales managers)	1		Our Carmel, Indiana headquarters and/or regional training location JDB selects
Functional (e.g., skip tracing, bankruptcy, etc., recommended for those with a need to know)	Varies	None	Our Carmel, Indiana headquarters and/or regional training location JDB selects

Each person from your Business who completes the above training sessions to JDB's satisfaction becomes training certified in each area. Trainees receive certificates indicating successful completion of training in each area. See Exhibit H for the nature of the instructional material for each session.

Training is given by highly experienced JDB staff members. The sales management, CNAC operations, and collections education may involve participation in role play and written exams.

Periodically, JDB may provide additional training programs conducted at the Company principal offices or another location chosen by JDB. Your attendance at these sessions will be at your own expense.

Additional training may be obtained through materials provided by Byrider Digital University. Byrider Digital University materials are available on the Internet at Ebyrider.com, which is password protected.

Other than the specific programs noted above, you must train all of your employees according to JDB's specifications and train your employees on an ongoing basis.

## **ITEM 12**

### **TERRITORY**

**No Exclusive Territory.** Unless specifically agreed otherwise, you will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control. Your Business will be granted for a specific location or a location subject to JDB's approval. JDB may establish other JDB Businesses near your location under the

same trademark or under different trademarks that may compete with your Business. You may choose to relocate your Business, but you must first obtain JDB's written approval. You may solicit customers outside of your area. Further, JDB or other franchisees may solicit customers inside your area.

However, if you sign an Area Development Agreement and comply with its terms and conditions, then you will be granted an exclusive territory and JDB cannot license other J.D. Byrider franchises or open company-owned J.D. Byrider Businesses within your exclusive territory. If you enter into an Area Development Agreement, your exclusive territory will be comprised of the counties or cities that you have agreed to develop (see Exhibit E). Continuation of your territorial rights under the Area Development Agreement does not depend upon achievement of a certain sales quota, market penetration level, or other contingency. We may modify or terminate your rights only if you fail to meet your development schedule or otherwise default under the Area Development Agreement.

Regardless of whether or not you sign an Area Development Agreement, you may be permitted, on a case-by-case basis, to purchase a right of first refusal on an area to be determined.

Although JDB has no plans to do so, it reserves the right to operate or offer franchises in businesses that sell goods or services similar to or competitive with yours, and JDB may offer those goods and services under different trade names or trademarks. And, although JDB has no plans to do so, it may establish other franchised or company-owned outlets, which may compete with your location.

Except as described above, you have no other options, rights of first refusal or similar rights.

### **ITEM 13**

### **TRADEMARKS**

You have the right to use certain trademarks, service marks and other commercial symbols in operating the Business. JDB's principal trademarks are "CNAC CarNow Acceptance Company" plus the design and "J.D. Byrider" plus the design (the "Marks"). These two Marks were registered on the Principal Register of the United States Patent and Trademark Office (PTO) on April 25, 1989 (Reg. No. 1,536,757) and July 9, 1996 (Reg. No. 1,986,354), respectively. The Company also registered the following trademarks: "J.D. Byrider" on February 5, 2002 (Reg. No. 2,536,326); "J.D. Byrider" (online) on March 2, 1999 (Reg. No. 2,227,947); and "CNAC – CarNow Acceptance Company" on June 14, 1994 (Reg. No. 1,839,624); and "CNAC" on February 19, 2002 (Reg. No. 2,539,885).

You must follow JDB's rules when you use its Marks. You cannot use any Mark as part of your corporate or legal business name or with modifying words, designs or symbols (except for those JDB licenses to you). You will not be permitted to use any

Mark in performing any unauthorized services, in selling any unauthorized products or in any other manner JDB has not expressly authorized in writing.

Any and all web sites or references made on the Internet relating to the J.D. Byrider franchise must be approved by JDB prior to being published on the Internet. Any and all web sites must have a banner link to the Byrider Franchising, Inc., corporate home page (<http://www.jdbyrider.com>). JDB will supply this image file to you.

There are no currently effective material determinations of the United States Patent and Trademark Office, the Trademark Trial and Appeal Board, the trademark administrator of any state or any court, nor are there any pending infringement, opposition or cancellation proceedings or material litigation, involving the principal trademark. There are no agreements currently in effect that significantly limit JDB's rights to use or license the Marks in a manner material to the franchise.

You must notify JDB immediately of any apparent infringement or challenge to your use of any Mark, or of any claim by any person of any rights in any Mark, and you may not communicate with any person other than JDB, JDB's attorneys and your attorneys of this infringement, challenge or claim. JDB has sole discretion to take the action it deems appropriate and the right to control exclusively any litigation, Patent and Trademark Office proceeding or any other administrative proceeding from this infringement, challenge or claim concerning any Mark. You must sign any instruments and documents, provide any assistance and take any action that, in the opinion of JDB attorneys, may be necessary or advisable to protect and maintain JDB interests in any litigation or Patent and Trademark Office or other proceeding or otherwise to protect and maintain JDB interests in the Marks.

If, in the circumstance of a trademark infringement challenge, JDB in its sole discretion directs you to modify or discontinue the use of any Mark or use one or more additional or substitute trade or service marks, you must comply with JDB's directions within a reasonable time after receiving notice. JDB will reimburse you for your reasonable direct expenses of changing printed advertising and marketing materials for which you have paid. However, JDB will not be obligated to reimburse you for any loss of revenue attributable to any modified or discontinued Mark or for any expenditures you make to promote a modified or substitute trademark or service mark.

JDB will indemnify you against and reimburse you for all damages for which you are held liable in any proceeding from your authorized use of any Mark, and for all costs you reasonably incur in defending any claim brought against you or any proceeding in which you are named as a party, if you have timely notified JDB of the claim or proceeding and otherwise have complied with the Franchise Agreement. JDB is entitled, at its option, to defend and control the defense of any proceeding resulting from your use of any Mark.

JDB does not actually know of any superior prior rights or of any infringing uses that could materially affect your use of the Marks or a franchisee's use of its principal trademarks in any state.

## **ITEM 14**

### **PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION**

There are no patents that are material to the franchise.

JDB claims copyrights in 12 manuals: the J.D. Byrider Systems Sales Manual (TX3-722-077), the J.D. Byrider Systems CNAC Manual (TX3-742-153), the J.D. Byrider Systems Pre-Opening Manual (TX3-742-148), and the J.D. Byrider Systems Field Support Manual (TX3-722-076), all granted on February 10, 1994, the J.D. Byrider/CNAC Computer User Manual-v.1 (TX3-984-387) granted on December 15, 1994, the J.D. Byrider/CNAC Computer User Manual-v.2 (TX4-035-363), and the following six manuals (copyright registration applications are pending): Sales Operations, CNAC Operations, J.D. Byrider/CNAC Reports, Service Operations, J.D. Byrider/CNAC Accounting Operations, and J.D. Byrider Advertising Standards manuals (the "Manuals"). JDB also claims copyrights for seven Byrider University training notebooks (copyright registration applications are pending): Accounting Systems Course Notebook, Advanced Accounting Course Notebook, Sales Associate & Sales Management Course Notebook, CNAC Operations Notebook, Collections Notebook, Service Management Notebook, and Leadership Essentials Driving Performance. In addition, JDB claims copyrights in five computer programs: Loan Writer (TX3-749-317), Credit Bureau (TX3-756-608) and Loan Originator (TX3-780-748), all granted on February 14, 1994; the computer program Loan Receivables (TX3-803-931) granted on December 12, 1994; and the computer program Discover (TX6-082-231) granted on November 8, 2004.

The Manuals and other materials JDB possesses contain JDB's confidential information. This information includes methods, formats, specifications, standards, systems, procedures, sales and marketing techniques and knowledge of and experience used to develop and operate JDB Businesses as well as particular methods of processing and tracking financial information about JDB customers. The unique formula JDB uses for credit approval of JDB customers is confidential information. You may not use JDB's confidential information in an unauthorized manner either during or after the term of the Franchise Agreement and must take reasonable steps to prevent its disclosure to others. For example, you may not duplicate any part of the Operating Manual, remove the manual at your Business location or fail to return it to JDB when the franchise term is over.

All ideas, concepts, techniques, names or materials concerning JDB Businesses, whether or not they constitute protectable intellectual property, and whether created by or for you or your owners, must be promptly disclosed to JDB, and will be deemed to be JDB's property and part of its System as works made-for-hire for JDB. You and your owners must sign whatever documents JDB requests to evidence JDB's ownership or to help JDB secure intellectual property rights in these ideas, concepts, techniques, names or materials.

There currently are no effective determinations of the Copyright Office (Library of Congress) or any court regarding any of the copyrighted materials. Nor are there any agreements currently in effect that significantly limit JDB's right to use or authorize others to use the copyrighted materials. Furthermore, there are no infringing uses actually known to JDB that could materially affect the use of the copyrighted materials in any state. JDB is not required by any agreement to protect, defend, or renew copyrights or confidential information, although it intends to do so when this action is in JDB's best interests. See Item 13 for protections that also apply to copyrights.

Microsoft software products are provided to you as a service by JDB, which includes computer software and may include associated media, printed materials, and "online" or electronic documentation (collectively "SOFTWARE PRODUCTS"). All title and intellectual property rights in and to the SOFTWARE PRODUCTS are owned by Microsoft or its suppliers. All title and intellectual property rights in and to the content which may be accessed through use of the SOFTWARE PRODUCTS are the property of the respective content owner and may be protected by applicable copyright or other intellectual property laws and treaties. The SOFTWARE PRODUCTS are licensed to JDB from MSLL, GP ("Microsoft"), a Nevada general partnership and a wholly-owned subsidiary of Microsoft Corporation. JDB does not own the SOFTWARE PRODUCTS and the use thereof is subject to certain rights and limitations of which you need to be informed. Your right to use the SOFTWARE PRODUCTS as a service is pursuant to your agreement with JDB and is subject to your understanding of and compliance with the customer license terms provided to you.

## **ITEM 15**

### **OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISE BUSINESS**

**A. Supervision.** As an owner of the Business, you are not required to conduct on-premises supervision or to personally participate in the direct operation of the Business. However, the Business must at all times be under the direct, on-location supervision of you or a trained and competent employee acting as a full-time manager. All of your employees must complete training. You or your managers must provide to your employees on-going training when necessary.

**B. Owner's Personal Guaranty.** If you are a corporation or limited liability company (taxed as a corporation), your owners must personally guarantee your obligations under the Franchise Agreement and must agree to be personally bound by and liable for any breach of the Franchise Agreement. A Personal Guaranty is attached to this Disclosure Document as Exhibit D. If you are a corporate franchisee, a manager must conduct on-premises supervision, but this manager need not have an equity interest in the Business.

**C. Noncompetition Clause.** You will be bound by a non-compete provision (see Item 17 below) and you, your shareholders or employees may also be subject to



additional noncompetition guarantees and agreements as established in the Franchise Agreement.

**ITEM 16**

**RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL**

JDB requires you to offer and sell only those goods and services that JDB has approved (see Item 9). You must offer all goods and services that JDB designates as required for all franchisees. Currently, franchises offer used vehicles for sale, financing and related products. JDB has the right to change the types of authorized goods and services. You will not be restricted as to customers to whom you may offer goods and services.

**ITEM 17**

**RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION**

This table lists certain important provisions of the franchise and related agreements pertaining to renewal, termination, transfer, and dispute resolution. You should read these provisions in the agreements attached to this disclosure document.

**THE FRANCHISE RELATIONSHIP**

	<b>Provision</b>	<b>Section</b>	<b>Summary</b>
a.	Term of the License	Article 5.1	20 years from the day the Franchise Agreement is signed
b.	Renewal or extension of the Term	Articles 5.2 and 5.3	You have the right to obtain 1 additional, successive franchise term of 20 years
c.	Requirements for you to renew or extend	Article 5.2(A-H)	Requirements include a request to obtain successive franchise term, compliance with the Franchise Agreement and with your financial obligations to JDB, execution of proper documents. "Renewal" means signing our then current franchise agreement for the 20-year successor franchise term, which could contain materially different terms

	<b>Provision</b>	<b>Section</b>	<b>Summary</b>
			(including fees).
d.	Termination by you	Article 16.3	You may terminate if you are in compliance with the Franchise Agreement, and you notify JDB of its material breach, but JDB does not cure the breach. The franchisee may terminate the agreement on any grounds available by law.
e.	Termination by JDB without cause	None	None
f.	Termination by JDB with cause	Articles 16.1 and 16.2	You may be terminated before you open if you do not satisfactorily complete the training program prior to opening for business, if you do not secure a Business location within 6 months of signing the Franchise Agreement, if you do not open the Business within 1 year of signing the Franchise Agreement or if information you have given to JDB is materially false, misleading, incomplete or inaccurate. You may be terminated after you open if you commit one of several violations and do not cure where opportunity to cure defaults is allowed.
g.	Termination of rights to exclusive territory in Area Development Agreement	Exhibit E	Your failure to comply with the development schedule will constitute a material default of the Area Development Agreement by you, and, in that event, JDB may license franchises to other parties or install company-owned franchises in the exclusive territory.
h.	"Cause" defined – defaults which can be	Article 16.2	10 days to cure amounts due to JDB, the Ad Group or

	<b>Provision</b>	<b>Section</b>	<b>Summary</b>
	cured		<p>their affiliates after written notice of the failure; 30 days to cure if 1) you voluntarily or otherwise abandon the Business unless the Business has been closed for a purpose approved by JDB, 2) you fail to purchase or maintain the required insurance, 3) you interfere with JDB's right to inspect the Business or observe its operation, 4) you make any unauthorized use or disclosure of any part of JDB's operations manuals or confidential information; 5) your assets, property, or interests are blocked under any regulation relating to terrorist activities or you violate any such regulation, 6) you fail to comply with any federal, state, or local law, ordinance, or regulation, 7) you fail to pay when due any federal or state taxes due on the Business' operation unless you are in good faith contesting your liability for those taxes, 8) you fail to assign the Franchise Agreement in accordance with the Franchise Agreement in the event of death or disability, 9) the loss of your right to occupy the Business due to a material breach of the lease, 10) you fail to comply with any other provision of the Franchise Agreement.</p>
i.	"Cause" defined – defaults which cannot	Article 16.1 and 16.2	Failure to open the Business within 1 year; failure to

	<b>Provision</b>	<b>Section</b>	<b>Summary</b>
	be cured		complete required initial training prior to opening for business; supplying JDB with materially false, misleading, incomplete, or inaccurate information; your software agreement is terminated by JDB for breach of its provisions; you make or attempt to make any transfer in violation of Article 14 of the Franchise Agreement, you make an assignment for the benefit of creditors or are deemed insolvent or unable to pay your debts generally as they become due; the business or Business Location is seized, taken over, or foreclosed by a government official, creditor, lienholder, or lessor and final judgment is unsatisfied for thirty days without bond or appeal or a levy of execution has been made upon the licenses granted or upon any property used in the Business and is not discharged within five days of such levy; you or any of your managers, directors, officers or majority stockholder are convicted of, or plead guilty or no content to, a felony or other criminal misconduct directly related to the operation of the Business.
j.	Your obligations on termination/nonrenewal	Article 17.1	Obligations include payment of outstanding amounts, sale to JDB of all assets it selected for your Business at the lower of your cost or

	<b>Provision</b>	<b>Section</b>	<b>Summary</b>
			fair market value, complete de-identification with JDB and return of confidential information (also see t below).
k.	Assignment of contract by JDB	Article 14.1	No restrictions on JDB's right to assign. However, no assignment will be made except to an assignee who, in the good faith and judgment of the franchisor, is willing and able to assume the franchisor's obligations.
l.	"Transfer" by you – definition	Articles 14.2 – 14.3	Includes transfers of rights and interests under the Franchise Agreement and transfers of ownership interest and Business assets.
m.	JDB's approval of transfer by you	Articles 14.2-14.3	JDB must give written consent for all transfers but will not unreasonably withhold consent as long as various conditions are being satisfied.
n.	Conditions for JDB's approval of transfer	Articles 14.2-14.3	The new franchisee to whom you transfer must have the skills and resources to fulfill your contract obligations, must undertake all obligations including training and signing a Franchise Agreement; you must release all claims against JDB, pay a transfer fee (see Item 6) and comply with the Franchise Agreement including the provisions for JDB's right of first refusal (see s and t below).
o.	JDB's right of first refusal to acquire your business	Article 15.1-15.1	Within 30 days of a notice of assignment from you, JDB has the right to match the offer given you by a third party and cause the transfer

	<b>Provision</b>	<b>Section</b>	<b>Summary</b>
			or assignment to be made to JDB.
p.	JDB's option to purchase your Business	None	None
q.	Your death or disability	Article 14.4	Does not constitute an assignment subject to JDB's right of first refusal.
r.	Non-competition covenants during the term of the franchise	Article 18.1	No direct or indirect involvement with the sale of similar products or services by another entity.
s.	Non-competition covenants after the franchise is terminated or expires	Article 18.2	No interest or involvement in a competing business for 2 years in the area where your Business or another JDB Business exists.
t.	Modification of the Agreement	Article 20.14	Modifications are permitted only with written agreement between you and JDB. The procedures, offered products and services and Marks may change at JDB's option, and you must comply with the changes at your expense.
u.	Integration/merger clause	Articles 20.14-20.15	The Franchise Agreement and attached or referenced materials make up the whole understanding between JDB and you. Other promises may not be enforceable.
v.	Dispute resolution by arbitration	Article 19.1	You and JDB will engage in arbitration conducted in Indianapolis, Indiana.
w.	Choice of forum	Article 20.6	Litigation must be in Marion County, Indiana (Subject to State Law)
x.	Choice of law	Article 20.5	Indiana law applies (Subject to State Law)

These states have statutes that may supersede the franchise agreement in your relationship with JDB, including the areas of termination and renewal of your franchise: Arkansas [Ark. Code Sections 4-72-201 to 4-72-210]; California [Bus. & Prof. Code Sections 20000 to 20043]; Connecticut [Gen. Stat. Sections 42-133e to 42-133h]; Delaware [Code Sections 2551 to 2556]; Hawaii [Rev. Stat. Section 482E-6]; Idaho

[Code Section 29-110]; Illinois [815 ILCS 705/1-44]; Indiana [Stat. Sections 23-2.5-1 and 23-2-2.7]; Iowa [Code Sections 523H.1 to 523H.17]; Michigan [Stat. Section 19.854(27)]; Minnesota [Stat. Section 80C.14]; Mississippi [Code Sections 75-24-51 to 87-410]; Missouri [Rev. Stat. Sections 407.400 to 407.410]; Nebraska [Rev. Stat. Sections 87-401 to 87-410]; New Jersey [Rev. Stat. Section 56:10-1 to 56:10-12]; South Dakota [Codified Laws Section 37-5a-51]; Virginia [Code 13.1-557 through 13.1-574]; Washington [Code Section 19.100.180]; and Wisconsin [Stat. Section 135.01 to 135.07]. These and other states may have other statutes and court decisions that may supersede the franchise agreement in your relationship with us including the areas of termination and renewal of your franchise.

## **ITEM 18**

### **PUBLIC FIGURES**

JDB does not use any public figures to promote its franchise.

## **ITEM 19**

### **FINANCIAL PERFORMANCE REPRESENTATIONS**

The FTC's Franchise Rule permits a franchisor to provide information about the actual or potential financial performance of its franchised and/or franchisor-owned stores, if there is a reasonable basis for the information, and if the information is included in the Disclosure Document. Financial performance information that differs from that included in Item 19 may be given only if: (1) a franchisor provides the actual records of an existing store you are considering buying; or (2) a franchisor supplements the information provided in this Item 19, for example, by providing information about possible performance at a particular location or under particular circumstances.

The financial information contained in the table below represents profits, expenses, and other statistics actually experienced by certain J.D. Byrider/CNAC businesses commonly called "Company-Owned Stores," which are owned and operated by Byrider Sales of Indiana S, Inc., and Byrider Finance, Inc., both headquartered in Carmel, Indiana. Because franchisees apply varying accounting procedures and other expenses, the information contained in this Item 19 does not include any data of/for franchised Business.

JDB compiled the information contained in the table below using the average annual operating results for all open company-owned stores that were open for at least three years as of 12/31/09 ("Mature Company-Owned Stores"). At 12/31/09 this represented 12 stores. The average annual financial information for the Mature Company-Owned Stores is broken out in quartiles ranking them by Net Income from Operations. It represents the average of each store's annual results from these three years, 2007 - 2009. Company Owned Stores with less than 3 years of operations were not included because new stores that have not had time to build a sizable portfolio of retail installment contracts have significantly different financial results than mature

stores. JDB compiled the data using a 3 year average because JDB Businesses require that loss reserves be established at the time a car is sold and a retail installment contract is initiated. The actual losses on these contracts can vary significantly so the actual earnings in any given year may not be an accurate representation. Utilizing a 3 year average gives a more accurate representation of a JDB Business.

The Mature Company-Owned Stores are located in 3 states: Indiana, Ohio, and Georgia. Some Mature Company-Owned Stores are in large metropolitan areas while others are in smaller towns with reduced populations. The Mature Company-Owned Stores are located in states where there is a significant concentration of J.D. Byrider facilities, and this fact should be considered when reviewing the following information tables. Material assumptions affecting the performance of the Mature Company-Owned Stores include access to borrowed funds at a competitive interest rate; experienced management personnel; and close proximity to JDB which allows for frequent communication.

The type of franchise currently offered by JDB is substantially the same as the Mature Company-Owned Stores, and has been substantially the same since JDB began franchising in 1989. However, being an independent business person, you have sole control over the operation of your Business. The following are some of the major variables that you will determine and that will influence your income and expenses:

1. Number of employees retained;
2. Method of compensating employees;
3. Price paid for inventory of vehicles;
4. Volume of vehicles sold per month;
5. Whether you choose to sell any of your accounts receivable;
6. Size of your capital investment;
7. Availability of borrowed funds;
8. Whether or not the reconditioning of vehicles is done by you or by an outside vendor;
9. The performance of your portfolio of accounts.



**J.D. Byrider Mature Company-Owned Store Results**  
**3 Year Average (period ending December 31 in 2007, 2008, and 2009) of All Open Stores**  
**Open At Least 3 Full Years as of December 31, 2009**

<b>Average Store Results</b>						
<i>Note: Averages are for all open stores that were open on 12/31 of that year for at least 3 full years</i>						
# Stores in Average	3			3		
	<u>First Quartile</u>		<u>% Met or Exceed Avg</u>	<u>Second Quartile</u>		<u>% Met or Exceed Avg</u>
Annual Vehicle Sales	858		66.67%	869		33.33%
Sales Revenue	9,869,836	77.71%	66.67%	9,943,794	77.89%	66.67%
Finance Revenue	2,830,378	22.29%	66.67%	2,821,973	22.11%	66.67%
Total Revenue	12,700,214	100.00%	66.67%	12,765,768	100.00%	66.67%
Cost of Goods Sold	5,784,393	45.55%	66.67%	5,932,356	46.47%	66.67%
Provision for Credit Losses	2,309,865	18.19%	66.67%	2,648,297	20.75%	33.33%
Total Gross Profit	4,605,956	36.27%	33.33%	4,185,114	32.78%	33.33%
Total Operating Expense	3,116,247	24.54%	66.67%	3,149,743	24.67%	33.33%
Net Income From Operations	1,489,708	11.73%	33.33%	1,035,371	8.11%	66.67%
<i>per car</i>	1,736		33.33%	1,192		66.67%

# Stores in Average	3			3		
	<u>Third Quartile</u>		<u>% Met or Exceed Avg</u>	<u>Fourth Quartile</u>		<u>% Met or Exceed Avg</u>
Annual Vehicle Sales	538		33.33%	778		66.67%
Sales Revenue	6,153,128	77.27%	33.33%	8,908,678	77.41%	66.67%
Finance Revenue	1,810,038	22.73%	33.33%	2,512,252	22.59%	66.67%
Total Revenue	7,963,167	100.00%	66.67%	11,420,930	100.00%	66.67%
Cost of Goods Sold	3,585,008	45.02%	33.33%	5,187,562	45.38%	66.67%
Provision for Credit Losses	1,318,079	16.55%	33.33%	3,330,018	22.78%	66.67%
Total Gross Profit	3,060,080	38.43%	33.33%	2,903,350	31.84%	66.67%
Total Operating Expense	2,277,725	28.60%	66.67%	3,484,489	30.51%	66.67%
Net Income From Operations	782,355	9.82%	66.67%	(581,139)	4.78%	33.33%
<i>per car</i>	1,453		66.67%	(747)		33.33%

**THE DATA PRESENTED IN THIS ITEM ARE FROM COMPANY-OWNED STORES THAT HAVE BEEN OPEN FOR AT LEAST 3 FULL YEARS. THE INFORMATION CONTAINED IN THIS ITEM SHOULD NOT BE CONSIDERED TO BE THE ACTUAL OR PROBABLE RESULTS THAT YOU WILL REALIZE. YOUR RESULTS WILL LIKELY DIFFER FROM THE RESULTS CONTAINED IN THIS ITEM.**

## **Notes**

Note 1 – All reported numbers were rounded to the nearest whole number, and, therefore, products and quotients of the numbers listed in the information table may reflect marginal rounding differences.

Note 2 – “Sales Revenue” means all revenue derived from the sale of vehicles and does not include Finance Revenue as that term is defined below. It also includes documentation fees that may accompany the sale of a vehicle.

Note 3 –The sale of a vehicle results in a retail installment contract with principal balance bearing interest due from each customer. “Finance Revenue” means the interest income received from customers in connection with retail installment contracts.

Note 4 – “Total Revenue” means Sales Revenue plus Finance Revenue.

Note 5 – “Cost of Goods Sold” means the cost of automobiles sold, extended service agreement claims, warranty reserve, and interest expense on debt associated with receivables financing.

Note 6 –Retail installment contracts generated at JDB Businesses are generally considered in the marketplace to be “sub prime” credit quality with a value less than the full contract amount. Generally accepted accounting principles require that a reserve for projected losses be calculated and taken as an expense (“Provision for Credit Losses”). This reserve is calculated by using the industry accepted Static Pool Analysis.

Note 7 – “Total Gross Profit” is calculated by subtracting Cost of Goods Sold, and Provision for Credit Losses from Total Revenue.

Note 8 – “Operating Expenses” includes on-site and off-site costs associated with the operation of a used vehicle sales and finance operation such as salaries, commissions, collection expenses, personnel costs, utilities, telephone, facilities costs, policy, repair expense, advertising, royalties and advertising fund contribution, and others, including regional multi-unit management expenses (which you may or may not have). Company Owned Stores pay the same amount of royalties and advertising fund contributions as Founder Franchisees (see Item 6). Therefore, your royalties and advertising fund contributions may be higher. This will increase your Operating Expenses. These Operating Expenses also do not include JDB’s corporate overhead which covers the costs of the executive office located in Carmel, Indiana, and corporate personnel

expense for human resources, accounting and legal. Your Business may or may not have some of these expenses. However, if you own multiple JDB Businesses, you will likely incur some of these expenses.

Note 9 – “Net Income from Operations” means Total Gross Profit minus Operating Expenses.

Note 10 – “Net Income per Vehicle Sold” means Net Income from Operations divided by the average annual vehicle sales.

JDB can make no guarantee that your Business will experience the same results. JDB will provide written substantiation for this financial information to prospective franchisees upon reasonable request. Actual results may vary from business to business and JDB cannot estimate the result of any particular franchised business. Your Business may not do as well as these Mature Company-Owned Stores. Selling used vehicles while extending credit to special credit customers is a business requiring management ability, judgment, and proper execution. JDB suggests that you review the following financial information, keeping in mind your personal goals, experience, financial condition, financial resources, and abilities.

Other than the preceding financial performance representation, JDB does not make any financial performance representations. JDB also does not authorize its employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing JDB Business, however, JDB may provide you with the actual records of that business. If you receive any other financial performance information or projections of your future income, you should report it to JDB’s management by contacting Jeffrey B. Higgins, 12802 Hamilton Crossing Blvd., Carmel, Indiana, 46032, 317-249-3000, the Federal Trade Commission, and the appropriate state regulatory agencies.

**ITEM 20**

**OUTLETS AND FRANCHISEE INFORMATION**

All figures in the following tables are as of December 31 of each year. For states not listed in a table, there was no activity to report during our last 3 fiscal years. All businesses listed as “company-owned” in the tables are operated by JDB’s related companies Byrider Sales of Indiana S, Inc. and Byrider Finance, Inc.

Table No. 1

Systemwide Outlet Summary  
For years 2007 to 2009

Column 1 Outlet Type	Column 2 Year	Column 3 Outlets at the Start of the Year	Column 4 Outlets at the End of the Year	Column 5 Net Change
Franchised	2007	112	116	+ 4
	2008	116	119	+ 3
	2009	119	111	- 8
Company- Owned	2007	13	14	+ 1
	2008	14	14	0
	2009	14	13	- 1
Total Outlets	2007	125	130	+ 5
	2008	130	133	+ 3
	2009	133	124	- 9

Table No. 2

Transfers of Outlets from Franchisees to New Owners (other than the Franchisor)  
For years 2007 to 2009

Column 1 State	Column 2 Year	Column 3 Number of Transfers
Alabama	2007	0
	2008	0
	2009	1
Arizona	2007	0

Column 1	Column 2	Column 3
State	Year	Number of Transfers
	2008	1
	2009	0
Michigan	2007	0
	2008	0
	2009	1
Missouri	2007	0
	2008	0
	2009	1
Nevada	2007	1
	2008	0
	2009	0
Ohio	2007	0
	2008	3
	2009	2
Total	2007	1
	2008	4
	2009	5

Table No. 3

Status of Franchised Outlets  
For years 2007 to 2009

Col. 1	Col. 2	Col. 3	Col. 4	Col. 5	Col. 6	Col. 7	Col. 8	Col. 9
State	Year	Outlets at Start of Year	Outlets Opened <sup>(A)</sup>	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations-Other Reasons	Outlets at End of the Year
Alabama	2007	4	0	0	0	0	0	4
	2008	4	0	0	0	0	0	4
	2009	4	1	2	0	0	0	3

Col. 1	Col. 2	Col. 3	Col. 4	Col. 5	Col. 6	Col. 7	Col. 8	Col. 9
State	Year	Outlets at Start of Year	Outlets Opened <sup>(A)</sup>	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations-Other Reasons	Outlets at End of the Year
Arizona	2007	4	0	0	0	0	0	4
	2008	4	1	1	0	0	0	4
	2009	4	0	3	0	0	0	1
California	2007	0	0	0	0	0	0	0
	2008	0	1	0	0	0	0	1
	2009	1	0	0	0	0	0	1
Colorado	2007	0	1	0	0	0	0	1
	2008	1	0	0	0	0	0	1
	2009	1	0	0	0	0	0	1
Florida	2007	11	1	0	0	0	0	12
	2008	12	0	3	0	0	0	9
	2009	9	0	2	0	0	0	7
Georgia	2007	1	2	0	0	0	0	3
	2008	3	0	0	0	0	0	3
	2009	3	0	1	0	0	0	2
Illinois	2007	6	1	0	0	0	0	7
	2008	7	1	0	0	0	0	8
	2009	8	0	0	0	0	0	8
Indiana	2007	13	0	4	0	0	0	9
	2008	9	1	0	0	0	0	10
	2009	10	0	0	1	0	0	9
Iowa	2007	2	0	0	0	0	0	2
	2008	2	2	0	0	0	0	4
	2009	4	0	0	0	0	0	4
Kansas	2007	0	1	0	0	0	0	1
	2008	1	0	0	0	0	0	1
	2009	1	0	0	0	0	0	1

Col. 1	Col. 2	Col. 3	Col. 4	Col. 5	Col. 6	Col. 7	Col. 8	Col. 9
State	Year	Outlets at Start of Year	Outlets Opened <sup>(A)</sup>	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations-Other Reasons	Outlets at End of the Year
Kentucky	2007	1	0	0	0	0	0	1
	2008	1	1	0	0	0	0	2
	2009	2	0	0	0	0	0	2
Louisiana	2007	2	0	0	0	0	0	2
	2008	2	0	0	0	0	0	2
	2009	2	1	0	0	0	0	3
Maryland	2007	1	0	0	0	0	0	1
	2008	1	0	0	0	0	0	1
	2009	1	0	0	0	0	0	1
Massachusetts	2007	4	0	0	0	0	0	4
	2008	4	0	0	0	0	0	4
	2009	4	0	0	0	0	0	4
Michigan	2007	4	0	0	0	0	0	4
	2008	4	0	0	0	0	0	4
	2009	4	2	1	0	0	0	5
Missouri	2007	3	0	0	2	0	0	1
	2008	1	0	0	0	0	0	1
	2009	1	1	1	0	0	0	1
Mississippi	2007	1	0	0	0	0	0	1
	2008	1	0	0	0	0	0	1
	2009	1	0	0	0	0	0	1
Nevada	2007	1	0	0	0	0	0	1
	2008	1	0	0	0	0	0	1
	2009	1	0	0	0	0	0	1

Col. 1	Col. 2	Col. 3	Col. 4	Col. 5	Col. 6	Col. 7	Col. 8	Col. 9
State	Year	Outlets at Start of Year	Outlets Opened <sup>(A)</sup>	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations-Other Reasons	Outlets at End of the Year
New Jersey	2007	1	0	0	0	0	0	1
	2008	1	0	0	0	0	0	1
	2009	1	0	0	0	0	0	1
New Mexico	2007	1	0	0	0	0	0	1
	2008	1	0	0	0	0	0	1
	2009	1	0	0	0	0	0	1
New York	2007	1	0	0	0	0	0	1
	2008	1	0	0	0	0	0	1
	2009	1	0	1	0	0	0	0
North Carolina	2007	1	1	0	0	0	0	2
	2008	2	1	0	0	0	0	3
	2009	3	1	1	0	0	0	3
Ohio	2007	18	0	0	0	0	0	18
	2008	18	4	4	0	0	0	18
	2009	18	1	2	0	0	0	17
Pennsylvania	2007	9	1	0	0	0	0	10
	2008	10	0	1	0	0	0	9
	2009	9	1	0	1	0	0	9
Rhode Island	2007	2	0	0	0	0	0	2
	2008	2	0	0	0	0	0	2
	2009	2	0	0	0	0	0	2
South Carolina	2007	2	0	0	0	0	0	2
	2008	2	0	0	0	0	0	2
	2009	2	1	0	0	0	0	3
Tennessee	2007	2	0	0	0	0	0	2
	2008	2	0	0	0	0	0	2
	2009	2	0	0	0	0	0	2



Col. 1	Col. 2	Col. 3	Col. 4	Col. 5	Col. 6	Col. 7	Col. 8	Col. 9
State	Year	Outlets at Start of Year	Outlets Opened <sup>(A)</sup>	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations-Other Reasons	Outlets at End of the Year
Texas	2007	5	1	0	0	0	0	6
	2008	6	1	0	0	0	0	7
	2009	7	0	0	0	0	0	7
Utah	2007	2	0	0	0	0	0	2
	2008	2	0	2	0	0	0	0
	2009	0	0	0	0	0	0	0
Virginia	2007	3	1	0	0	0	0	4
	2008	4	1	0	0	0	0	5
	2009	5	0	1	0	0	0	4
West Virginia	2007	3	0	0	0	0	0	3
	2008	3	0	0	0	0	0	3
	2009	3	0	0	0	0	0	3
Wisconsin	2007	4	0	0	0	0	0	4
	2008	4	0	0	0	0	0	4
	2009	4	0	0	0	0	0	4
Totals	2007	112	10	4	2	0	0	116
	2008	116	14	11	0	0	0	119
	2009	119	9	15	2	0	0	111

Table No. 4

Status of Company-Owned Outlets  
For years 2007 to 2009

Col. 1	Col. 2	Col. 3	Col. 4	Col. 5	Col. 6	Col. 7	Col. 8
State	Year	Outlets at Start of the Year	Outlets Opened	Outlets Reacquired From Franchisee	Outlets Closed	Outlets Sold to Franchisee	Outlets at End of the Year
Florida	2007	0	1	0	0	0	1
	2008	1	0	0	0	0	1
	2009	1	0	0	1	0	0
Georgia	2007	3	0	0	0	0	3
	2008	3	0	0	0	0	3
	2009	3	0	0	1	0	2
Indiana	2007	5	0	0	0	0	5
	2008	5	0	0	0	0	5
	2009	5	0	0	0	0	5
Ohio	2007	5	0	0	0	0	5
	2008	5	0	0	0	0	5
	2009	5	1	0	0	0	6
Totals	2007	13	1	0	0	0	14
	2008	14	0	0	0	0	14
	2009	14	1	0	2	0	13

Table No. 5

PROJECTED OPENINGS AS OF DECEMBER 31, 2009

Column 1 State	Column 2 Franchise Agreements Signed But Outlet Not Opened	Column 3 Projected New Franchised Outlet In The Next Fiscal Year	Column 4 Projected New Company-Owned Outlet In the Next Fiscal Year
Florida	6	1	0
Illinois	3	1	0
Maryland	1	0	0
Missouri	1	0	0
Ohio	3	1	0
Texas	1	1	0
Total	15	4	0

Exhibit F is a list of the names of all of our franchisees as of December 31, 2009. Exhibit N is a list of the names, cities and states, and telephone numbers of franchisees who had a franchise terminated, canceled or not renewed, or who otherwise voluntarily or involuntarily ceased to do business under our Franchise Agreement, from January 1, 2009 until December 31, 2009 or who have not communicated with JDB within 10 weeks of the Disclosure Document's issuance date. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

In some instances, you may wish to speak with current and former franchisees, but be aware that not all such franchisees will be able to communicate with you.

There are no trademark-specific franchisee organizations associated with the J.D. Byrider network that are incorporated or otherwise organized under state law and have asked JDB to be included in this Disclosure Document.

## **ITEM 21**

### **FINANCIAL STATEMENTS**

Exhibit A contains the audited consolidated financial statements of our parent company, J.D. Byrider Systems, Inc., for the fiscal years ended December 31, 2009, 2008 and 2007. J.D. Byrider Systems, Inc. has agreed to guarantee our liabilities and obligations to franchisees and under the franchise laws. Exhibit A contains a copy of this guarantee.

## **ITEM 22**

### **CONTRACTS**

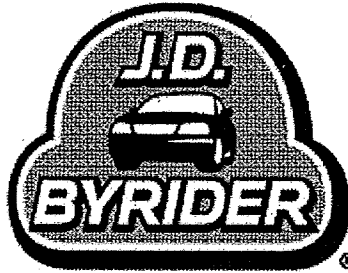
The following agreements are attached as exhibits to this Disclosure Document:

- a. Franchise Agreement -- Exhibit B
- b. State Law Addenda -- Exhibit C
- c. Personal Guaranty -- Exhibit D
- d. Area Development Agreement -- Exhibit E
- e. Software Services and User Agreement -- Exhibit G
- f. Co-Franchisee Agreement -- Exhibit I
- g. Disclosure Acknowledgment Statement -- Exhibit L

## **ITEM 23**

### **RECEIPT**

The last two pages of this Disclosure Document are identical pages acknowledging receipt of this entire document (including the exhibits). Please sign and return to us one copy; please keep the other copy along with this Disclosure Document.



**COMBINED FINANCIAL STATEMENTS  
AND  
INDEPENDENT AUDITORS' REPORT**

**December 31, 2009, 2008, and 2007**

**J.D. BYRIDER SYSTEMS, INC.  
AND BYRIDER SALES OF INDIANA S, INC.**

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800 East 96th Street  
Suite 500  
Indianapolis, IN 46240

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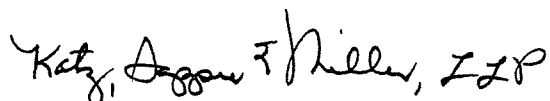
## *Independent Auditors' Report*

Board of Directors and Stockholders  
J.D. Byrider Systems, Inc. and Byrider Sales of Indiana S, Inc.

We have audited the accompanying combined balance sheets of J.D. Byrider Systems, Inc. and Byrider Sales of Indiana S, Inc. as of December 31, 2009, 2008 and 2007, and the related combined statements of income, stockholders' equity and cash flows for the years then ended. These combined financial statements are the responsibility of the Companies' management. Our responsibility is to express an opinion on these combined financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the combined financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the combined financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the 2009, 2008 and 2007 combined financial statements referred to above present fairly, in all material respects, the financial position of J.D. Byrider Systems, Inc. and Byrider Sales of Indiana S, Inc. at December 31, 2009, 2008 and 2007, and the results of their operations and their cash flows for the years then ended in conformity with accounting principles generally accepted in the United States.



Indianapolis, Indiana  
March 15, 2010

**J.D. BYRIDER SYSTEMS, INC. AND BYRIDER SALES OF INDIANA S, INC.**

**COMBINED BALANCE SHEETS**  
December 31, 2009, 2008, and 2007

**ASSETS**

	2009	2008	2007
<b>ASSETS</b>			
Receivables	\$ 166,045,562	\$ 161,793,000	\$ 155,155,274
Allowances for credit losses	(37,483,094)	(37,391,292)	(34,304,169)
Receivables, net	<u>128,562,468</u>	<u>124,401,708</u>	<u>120,851,105</u>
Cash	934,556	973,820	1,625,774
Accounts receivable-related parties	4,559	20,566	49,856
Inventories	10,852,146	9,487,173	8,468,643
Property and equipment	11,537,296	11,088,199	11,881,488
Assets of discontinued locations	17,287,762	23,955,398	22,542,180
Other assets	<u>521,266</u>	<u>482,999</u>	<u>685,950</u>
<b>TOTAL ASSETS</b>	<u>\$ 169,700,053</u>	<u>\$ 170,409,863</u>	<u>\$ 166,104,996</u>

**LIABILITIES AND STOCKHOLDERS' EQUITY**

<b>LIABILITIES</b>			
Revolving lines of credit borrowings	\$ 92,420,000	\$ 99,250,000	\$ 98,695,000
Notes payable	5,816,364	6,024,355	6,468,639
Subordinated notes payable			937,500
Subordinated notes payable-related parties	3,121,083	6,959,571	6,959,571
Trade accounts payable	1,748,131	1,476,394	1,481,273
Accrued expenses and taxes	7,869,888	6,564,813	7,085,130
Liabilities of discontinued locations	3,008,529	3,431,469	3,429,002
Deferred revenue	824,000	1,029,000	931,500
Total Liabilities	<u>114,807,995</u>	<u>124,735,602</u>	<u>125,987,615</u>
<b>STOCKHOLDERS' EQUITY</b>			
Class A common stock, no par value	38,650	386,498	386,498
Class B common stock, no par value	347,848		
Additional paid-in capital	2,602,453	2,587,979	2,576,288
Retained earnings	54,071,407	44,982,128	39,260,174
	<u>57,060,358</u>	<u>47,956,605</u>	<u>42,222,960</u>
Common stock in treasury at cost	(656,834)	(656,834)	(371,519)
Notes receivable from stockholder	<u>(1,511,466)</u>	<u>(1,625,510)</u>	<u>(1,734,060)</u>
Total Stockholders' Equity	<u>54,892,058</u>	<u>45,674,261</u>	<u>40,117,381</u>
<b>TOTAL LIABILITIES</b>			
<b>STOCKHOLDERS' EQUITY</b>	<u>\$ 169,700,053</u>	<u>\$ 170,409,863</u>	<u>\$ 166,104,996</u>

See accompanying notes.



**J.D. BYRIDER SYSTEMS, INC. AND BYRIDER SALES OF INDIANA S, INC.**

**COMBINED STATEMENTS OF INCOME**  
**Years Ended December 31, 2009, 2008, and 2007**

	2009	2008	2007
<b>REVENUE</b>			
Automobile sales	\$ 101,972,460	\$ 104,375,315	\$ 107,992,593
Interest income	31,265,229	30,109,542	28,247,206
Franchise fee and royalty income	14,225,350	14,217,773	14,118,640
Total Revenue	<u>147,463,039</u>	<u>148,702,630</u>	<u>150,358,439</u>
<b>COSTS AND EXPENSES</b>			
Cost of revenue, including provision for credit losses on contracts receivable	91,006,770	93,769,045	94,861,180
Interest expense	2,785,477	5,362,476	7,129,812
Automobile sales and finance operating expenses	26,341,188	25,955,552	26,719,531
General and administrative expenses	15,803,794	14,488,032	14,720,351
Total Costs and Expenses	<u>135,937,229</u>	<u>139,575,105</u>	<u>143,430,874</u>
<b>NET INCOME FROM CONTINUING OPERATIONS</b>	11,525,810	9,127,525	6,927,565
Loss from operations of discontinued locations	<u>(606,418)</u>	<u>(1,110,831)</u>	<u>(1,309,346)</u>
<b>NET INCOME</b>	<u>\$ 10,919,392</u>	<u>\$ 8,016,694</u>	<u>\$ 5,618,219</u>

*See accompanying notes.*

**J.D. BYRIDER SYSTEMS, INC. AND BYRIDER SALES OF INDIANA S, INC.**

**COMBINED STATEMENTS OF STOCKHOLDERS' EQUITY**  
Years Ended December 31, 2009, 2008, and 2007

	Class A Voting Common Stock	Class B Nonvoting Common Stock	Common Stock in Treasury	Notes Receivable from Stockholder	Additional Paid-in Capital	Retained Earnings	Total Stockholders' Equity
<b>BALANCE AT JANUARY 1, 2007</b>	\$386,498		\$(209,019)	\$ (1,837,379)	\$2,572,391	\$38,678,023	\$ 39,590,514
Net income						5,618,219	5,618,219
Issuance of stock options					3,897		3,897
Dividend distributions						(5,036,068)	(5,036,068)
Purchase of common stock for treasury			(162,500)				(162,500)
Collections on notes receivable from stockholder				103,319			103,319
<b>BALANCE AT DECEMBER 31, 2007</b>	386,498		(371,519)	(1,734,060)	2,576,288	39,260,174	40,117,381
Net income						8,016,694	8,016,694
Issuance of stock options					11,691		11,691
Dividend distributions						(2,294,740)	(2,294,740)
Purchase of common stock for treasury			(285,315)				(285,315)
Collections on notes receivable from stockholder				108,550			108,550
<b>BALANCE AT DECEMBER 31, 2008</b>	386,498		(656,834)	(1,625,510)	2,587,979	44,982,128	45,674,261
Net income						10,919,392	10,919,392
Recapitalization of common stock	(347,848)	\$347,848					
Issuance of stock options					14,474		14,474
Dividend distributions						(1,830,113)	(1,830,113)
Collections on notes receivable from stockholder				114,044			114,044
<b>BALANCE AT DECEMBER 31, 2009</b>	<u>\$ 38,650</u>	<u>\$347,848</u>	<u>\$(656,834)</u>	<u>\$ (1,511,466)</u>	<u>\$2,602,453</u>	<u>\$54,071,407</u>	<u>\$ 54,892,058</u>

See accompanying notes.

**J.D. BYRIDER SYSTEMS, INC. AND BYRIDER SALES OF INDIANA S, INC.**

**COMBINED STATEMENTS OF CASH FLOWS**  
**Years Ended December 31, 2009, 2008, and 2007**

	2009	2008	2007
<b>OPERATING ACTIVITIES</b>			
Net income	\$ 10,919,392	\$ 8,016,694	\$ 5,618,219
Adjustments to reconcile net income to net cash provided by operating activities:			
Provision for estimated credit losses	34,042,278	39,556,834	37,424,043
Depreciation and amortization	1,169,513	1,341,923	1,458,716
Noncash compensation expense	14,474	11,691	3,897
(Gain) loss on disposals of equipment	10,487	(31,571)	(200,379)
(Increase) decrease in certain assets:			
Trade and other receivables	353,135	(915)	(493,287)
Inventories	71,230	(956,966)	(3,060,095)
Other assets	(82,666)	111,618	38,758
Increase (decrease) in certain liabilities:			
Accounts payable and accrued expenses	1,301,300	(386,637)	348,065
Deferred revenue	(205,000)	97,500	225,000
Net Cash Provided by Operating Activities	<u>47,594,143</u>	<u>47,760,171</u>	<u>41,362,937</u>
<b>INVESTING ACTIVITIES</b>			
Installment contracts originated	(112,693,607)	(124,603,657)	(130,284,806)
Installment contracts repaid	79,235,855	79,962,843	78,078,046
Cash purchases of property and equipment	(1,066,029)	(642,153)	(2,903,179)
Proceeds from sales of equipment	17,082	255,609	1,039,741
(Increase) decrease in escrow balance	29,824	49,614	142,554
Net Cash (Used) by Investing Activities	<u>(34,476,875)</u>	<u>(44,977,744)</u>	<u>(53,927,644)</u>
<b>FINANCING ACTIVITIES</b>			
Net borrowings (payments) from revolving lines of credit	(6,830,000)	555,000	20,551,475
Proceeds from notes payable			485,142
Principal payments on notes payable	(771,975)	(580,376)	(1,148,584)
Principal payments on subordinated notes payable	(3,838,488)	(937,500)	(2,061,476)
Distributions to stockholders	(1,830,113)	(2,294,740)	(5,036,068)
Collections on notes receivable from stockholders	114,044	108,550	103,319
Purchases of treasury stock		(285,315)	(162,500)
Net Cash (Used) Provided by Financing Activities	<u>(13,156,532)</u>	<u>(3,434,381)</u>	<u>12,731,308</u>
<b>NET (DECREASE) INCREASE IN CASH</b>	(39,264)	(651,954)	166,601
<b>CASH</b>			
Beginning of Year	<u>973,820</u>	<u>1,625,774</u>	<u>1,459,173</u>
End of Year	<u>\$ 934,556</u>	<u>\$ 973,820</u>	<u>\$ 1,625,774</u>
<b>SUPPLEMENTAL DISCLOSURES</b>			
Cash paid for interest	\$ 3,493,479	\$ 7,221,781	\$ 7,821,514
Noncash investing and financing activities:			
Property and equipment purchased with notes payable	416,556		

*See accompanying notes.*

# J.D. BYRIDER SYSTEMS, INC. AND BYRIDER SALES OF INDIANA S, INC.

## NOTES TO COMBINED FINANCIAL STATEMENTS

### NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

**Basis of Presentation:** The accompanying combined financial statements include the consolidated financial statements of J.D. Byrider Systems, Inc. (“Systems”) and its wholly-owned subsidiaries: Byrider Franchising, Inc. (“Franchising”), Byrider Finance, Inc. (“Finance”), and Byrider Properties, Inc. (“Properties”), and the consolidated financial statements of Byrider Sales of Indiana S, Inc. (“Sales”) and its wholly-owned subsidiaries: Byrider Capital, Inc. (“Capital”) and Byrider SPV, Inc. (“SPV”), which are affiliated through common ownership, primarily by Andrea L. DeVoe, her family and employees of Systems and Sales. All significant intercompany accounts and transactions have been eliminated in the consolidations of Systems and Sales and in the combination of the financial statements of Systems and Sales (hereinafter collectively referred to as “the Company”).

**Nature of Operations:** Systems, through certain wholly-owned subsidiaries, and Sales are engaged in the business of selling used automobiles to the sub-prime consumer market and warehousing and servicing retail installment contracts made in connection with such sales. Systems, through a wholly-owned subsidiary, franchises its operational techniques, computer systems, trademarks, marketing, and general operations to franchisees. At December 31, 2009, 2008, and 2007, Systems had 124, 132, and 130, respectively, operational franchises located in 30 states in 2009 and 31 states in 2008 and 2007 across the United States.

Sales operated five automobile sales lots in Indiana, five in Ohio, and two in Georgia at December 31, 2009. All sales lots have accompanying finance centers operated by Finance. Most of the combined assets are managed by Finance, consisting primarily of retail installment contracts receivable. Properties leases land and buildings to Sales. Capital was incorporated to administer a finance receivable sale program for the Company and its franchisees and is inactive. SPV was incorporated as a special purpose corporation to facilitate the sale of contracts receivable and currently leases automobiles to Sales for loaner vehicles to its customers.

**Estimates:** Management uses estimates and assumptions in preparing financial statements in accordance with accounting principles generally accepted in the United States. Those estimates and assumptions affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities and the reported revenues and expenses. Actual results could vary from the estimates that were used.

#### **Revenue Recognition**

- **Automobile and Finance Revenue:** Income from automobile sales is recognized when an installment sales contract is entered into with a buyer. Interest income from installment sales contracts is recognized using the interest method. Interest income is recognized through the earlier of the term of the contract or until a loan is sixty days contractually delinquent or written off.
- **Franchise Revenue:** Franchise revenue includes sales of computer systems and franchise fees. Franchise fees consist of an initial franchise fee due upon the awarding of the franchise to the franchisee and a continuing monthly franchise service fee based upon either a percentage of sales and/or a percentage of cash receipts of the franchisee or a flat monthly fee. The initial franchise fee revenue is recognized when all material conditions relating to the franchise sale have been substantially satisfied. Until these conditions have been substantially satisfied, the initial fee is recorded as deferred revenue. Royalty revenue is recorded in the period in which the franchisee records the cash receipt or the sale, as applicable.

## NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

**Cash:** The Company periodically maintains cash balances in bank accounts which may exceed federally insured limits. The Company has not experienced any losses in such accounts.

**Receivables:** Retail installment contracts receivable, originating through the sales of automobiles, represent the unremitted purchase price of automobiles sold to consumers using installment sales contracts. The Company performs credit evaluations of its customers' financial condition and retains possession of automobile titles collateralizing the contracts receivable.

The allowance for credit losses is established by charging a provision for credit losses against earnings and is maintained at an amount considered by management adequate to absorb estimated credit losses inherent in the contracts receivable portfolio. Management's estimate of inherent credit losses is based on historical loss experience, current economic conditions, operating policies and practices, and other appropriate considerations. Credit losses on receivables are charged to the allowance. Automobiles are generally repossessed prior to the contract becoming 90 days contractually delinquent. After repossession, the automobile is sold and any remaining contract receivable in excess of the proceeds from the sale of the vehicle, net of costs incurred to dispose of the automobile, is charged off.

The Company accrues for sales returns on installment contracts in which the customer defaults on the first payment. The Company records an accrued liability and reduces sales and cost of revenue for these first payment defaults.

The Company's customers predominantly reside in Indiana, Ohio, Georgia, and Florida, which represents a concentration of credit risk associated with the economy of a small geographic area.

Trade and other receivables represent primarily franchise royalties and other amounts due from franchisees.

**Inventories** of vehicles are valued using the lower of cost (specific identification method) or market. Certain vehicle reconditioning costs, which enhance the wholesale value of the vehicle, are capitalized.

**Property and Equipment** are recorded at cost less accumulated depreciation. Depreciation is computed using the straight-line method over the estimated useful lives of the respective assets ranging from 3 to 39 years.

**Warranty Expense:** The Company provides a limited warranty on substantially all automobiles sold for a period of 24 months or 24,000 miles. A provision for estimated future costs related to the warranty is recorded when an automobile is sold.

**Income Taxes:** The Company, with the consent of its stockholders, has elected under the Internal Revenue Code to be taxed as an S Corporation. The stockholders of an S Corporation are taxed on their proportionate share of the Company's taxable income. Therefore, no provision or liability for income taxes has been included in the combined financial statements. Certain specific deductions and credits flow through the Company to its stockholders.

The Company files income tax returns in the U.S. federal jurisdiction and various state jurisdictions. The Company is no longer subject to U.S. federal and state income tax examinations by tax authorities for years before 2006.

## NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

*Advertising and Promotion Costs* are charged to operations as they are incurred. Such costs totaled approximately \$1,398,000, \$1,861,000, and \$2,583,000 during 2009, 2008, and 2007, respectively.

*Sales Taxes* collected from customers and remitted to state governmental agencies are reported on a net basis and, accordingly, are not reflected in revenue or costs and expenses.

*Common Stock:* Effective March 30, 2009, the Company issued nine shares of Class B nonvoting shares for every one share of Class A voting shares issued and outstanding, in a tax-free recapitalization. As part of this recapitalization, 90% of the cost of Class A common stock was allocated to Class B common stock. Also effective March 30, 2009, the number of authorized Class A shares of Systems was reduced from 55,000,000 to 10,000,000 shares and 90,000,000 of Class B shares were authorized for Systems and Sales. Both classes of stock have the same relative rights, preferences, limitations and restrictions, except that holders of nonvoting shares are not entitled to vote on any matters, except as provided by law.

*Common Stock in Treasury:* Shares of common stock purchased by the Company are recorded at cost and result in a reduction of stockholders' equity. When treasury shares are reissued, the Company uses the weighted average cost method for determining cost. The difference between the cost of the treasury shares and the issuance price is added or deducted from additional paid-in capital.

*Stock Based Compensation:* For the issuance of stock options, the Company recognizes the grant date fair value of stock options issued to employees in the combined statements of income.

*Subsequent Events:* The Company has evaluated the combined financial statements for subsequent events occurring through March 15, 2010, the date the combined financial statements were available to be issued.

## NOTE 2 - RECEIVABLES

Installment contract receivables (contracts) have an original weighted average life of approximately 47 months. The Company places contracts on a non-accrual status when they reached 60 days past due. At December 31, 2009, 2008, and 2007, the Company had \$2,548,616, \$4,835,014, and \$3,270,574, respectively, of contracts on non-accrual status. Although the probability that these contracts are uncollectible has not reached the level to charge-off the contracts, management believes it is prudent to discontinue accruing interest income on these contracts. Further, the Company had \$859,307, \$1,989,142, and \$1,360,568 of contracts past due 90 days or more at December 31, 2009, 2008, and 2007, respectively, which are included in the contracts on non-accrual status.

A summary of the Company's receivables at December 31, 2009, 2008, and 2007, is as follows:

	2009	2008	2007
Installment contract receivables	\$163,573,763	\$159,122,318	\$152,393,111
Allowance for credit losses	<u>(37,138,719)</u>	<u>(37,185,062)</u>	<u>(33,976,353)</u>
Installment contract receivables, net	<u>126,435,044</u>	<u>121,937,256</u>	<u>118,416,758</u>
Trade and other receivables	2,471,799	2,670,682	2,762,163
Allowance for credit losses and returns	<u>(344,375)</u>	<u>(206,230)</u>	<u>(327,816)</u>
Trade and other receivables, net	<u>2,127,424</u>	<u>2,464,452</u>	<u>2,434,347</u>
Receivables, net	<u>\$128,562,468</u>	<u>\$124,401,708</u>	<u>\$120,851,105</u>

## NOTE 2 - RECEIVABLES (CONTINUED)

Changes in the allowance for credit losses on installment contract receivables for the years ended December 31, 2009, 2008, and 2007, are as follows:

	2009	2008	2007
Allowance-beginning of year	\$37,185,062	\$33,976,353	\$28,188,289
Provision for estimated credit losses	30,133,524	31,252,371	29,613,506
Charge offs-net of recoveries	<u>(30,179,867)</u>	<u>(28,043,662)</u>	<u>(23,825,442)</u>
Allowance-end of year	<u>\$37,138,719</u>	<u>\$37,185,062</u>	<u>\$33,976,353</u>

Contractual maturities of installment contract receivables, which are not necessarily forecasts of future cash collections at December 31, 2009, are as follows:

Payable In	Payments
2010	\$ 58,132,030
2011	51,130,373
2012	39,984,813
2013	14,325,812
2014	<u>735</u>
Total	<u>\$163,573,763</u>

## NOTE 3 - INVENTORIES

Inventories at December 31, 2009, 2008, and 2007, consisted of the following:

	2009	2008	2007
Used automobiles	\$10,763,927	\$ 9,431,933	\$ 8,419,394
Other	<u>88,219</u>	<u>55,240</u>	<u>49,249</u>
Total Inventories	<u>\$10,852,146</u>	<u>\$ 9,487,173</u>	<u>\$ 8,468,643</u>

## NOTE 4 - PROPERTY AND EQUIPMENT

Property and equipment at December 31, 2009, 2008, and 2007, consisted of the following:

	2009	2008	2007
Land and improvements	\$ 5,891,104	\$ 5,687,900	\$ 5,612,092
Buildings and improvements	5,510,132	5,282,919	5,282,920
Furniture and equipment	7,109,103	6,676,056	6,868,605
Leasehold improvements	2,943,810	2,568,019	2,494,149
Automobiles	57,427	81,537	
Construction in process	<u>109,364</u>		<u>55,377</u>
	21,620,940	20,296,431	20,313,143
Less: Accumulated depreciation	<u>(10,083,644)</u>	<u>(9,208,232)</u>	<u>(8,431,655)</u>
Total Property and Equipment	<u>\$11,537,296</u>	<u>\$11,088,199</u>	<u>\$11,881,488</u>

**NOTE 5 - REVOLVING LINES OF CREDIT**

Borrowings under revolving lines of credit at December 31, 2009, 2008, and 2007, consisted of the following:

	2009	2008	2007
Installment contract receivables line of credit	\$87,000,000	\$92,750,000	\$92,195,000
Inventory and Franchise line of credit	<u>5,420,000</u>	<u>6,500,000</u>	<u>6,500,000</u>
Total Revolving Lines of Credit Borrowings	<u>\$92,420,000</u>	<u>\$99,250,000</u>	<u>\$98,695,000</u>

**Installment Contract Receivables Line of Credit:** Finance has a revolving line of credit with a bank which provides for maximum borrowings up to the lesser of \$110,000,000 or 60% of eligible installment contract receivables, as defined. The Company has the option to borrow under this agreement at the Bank's prime lending rate plus an applicable margin or at LIBOR plus an applicable margin (2.13% at December 31, 2009). The applicable margins shall be adjusted from time to time based upon leverage ratios, as defined. The line of credit requires monthly interest payments. Outstanding borrowings are secured by substantially all of the assets of Finance and a second lien position on substantially all of the assets of Sales.

Effective February 24, 2010, the revolving line of credit was renewed through February 24, 2012. As part of the renewal, the interest rate margin increased establishing a minimum interest rate of 4.50%. The rate in effect at December 31, 2009 would have been 4.50% under the terms of the renewal.

**Inventory and Franchise Line of Credit:** Sales and Franchising have a revolving line of credit with a financial institution which provides for maximum borrowings of up to \$7,500,000 through July 1, 2010. Borrowings under this credit facility bear interest at the greater of LIBOR plus 3.50% or 4.50% (4.50% at December 31, 2009). The availability of borrowings is based on the purchase of automobiles and franchise receivables. Amounts borrowed are due upon sale of the purchased automobiles or payment by the franchisee on the receivable. Outstanding borrowings are secured by substantially all of the assets of Sales and accounts receivable of Franchising.

The revolving line of credit and notes payable agreements contain, among other provisions, certain restrictive covenants including maintenance of a maximum leverage ratio, maximum collateral percentage, minimum interest coverage percentage, and limitations on distributions to shareholders. Management was not aware of any violations of credit agreement covenants at December 31, 2009.

**NOTE 6 - NOTES PAYABLE**

Notes payable as of December 31, 2009, 2008, and 2007, consisted of the following:

	2009	2008	2007
Notes payable to various banks in monthly installments of principal and interest, and maturing from November 2010 to September 2021. The notes bear interest at rates ranging from 3.08% to 7.50% and are collateralized by substantially all of the operating assets of the Company.	<u>\$5,816,364</u>	<u>\$6,024,355</u>	<u>\$6,468,639</u>



## NOTE 6 - NOTES PAYABLE (CONTINUED)

As of December 31, 2009, the aggregate principal payments required by the above long-term obligations were as follows:

Payable In	Principal
2010	\$1,375,951
2011	205,727
2012	219,643
2013	234,500
2014	250,361
Thereafter	<u>3,530,182</u>
Total	<u>\$5,816,364</u>

## NOTE 7 - SUBORDINATED NOTE PAYABLE

Finance had a subordinated note payable to a finance company with quarterly interest payments. The note was paid in full in February 2008. The note was subordinated to the installment contract receivables line of credit and the inventory line of credit. The note was secured by a second priority lien on substantially all of the assets of Finance and by a third priority lien on substantially all of the assets of Sales. At December 31, 2007, the outstanding balance of the note was \$937,500.

## NOTE 8 - RELATED PARTY TRANSACTIONS

Accounts receivable from related parties are due principally from companies owned by the Company's principal stockholder.

The Company had the following unsecured subordinated notes payable at December 31, 2009, 2008, and 2007:

	2009	2008	2007
Notes payable to stockholders, subordinate to bank debt, bearing interest computed at rates ranging from 5.75% to the prime rate plus 8.00% and payable annually, with maturity dates through 2010.	\$2,933,583	\$4,709,571	\$4,709,571
Note payable to a stockholder, subordinate to bank debt, bearing interest computed at 8.00% and payable annually, with principal due upon demand.	<u>187,500</u>	<u>2,250,000</u>	<u>2,250,000</u>
	<u>\$3,121,083</u>	<u>\$6,959,571</u>	<u>\$6,959,571</u>

As of December 31, 2009, the principal of unsecured subordinated notes payable of \$3,121,083 all mature in 2010.

During 2009, 2008, and 2007, the Company incurred approximately \$496,000, \$619,000, and \$625,000, respectively, of interest expense in connection with the above related party loans.

## NOTE 8 - RELATED PARTY TRANSACTIONS (CONTINUED)

During 2009, the Company entered into an agreement with Credit Max Collection Agency, Inc. (Credit Max), a related party with similar ownership to the Company, to collect the remaining installment contracts of the Florida location that was closed during 2009. As part of the agreement, Credit Max will retain 10% of cash collections as a fee for collecting the installment contracts. The Company will continue to perform the warranty repairs and policy work for the remaining Florida loans. The Company also has an agreement with Credit Max to perform collection services on installment contracts charged-off by the Company. During 2009, 2008, and 2007 the Company paid Credit Max approximately \$974,000, \$746,000, and \$697,000, respectively, related to these agreements.

The Company has operating lease agreements with related parties for land, land improvements, and office space with lease terms expiring in 2014 and 2015. Rental expense for all related party operating leases totaled approximately \$740,000, \$650,000, and \$635,000 in 2009, 2008, and 2007, respectively.

The future minimum rental payments for long-term related party lease obligations are summarized as follows:

Payable In	Rental Payments
2010	\$ 791,700
2011	791,700
2012	791,700
2013	791,700
2014	700,700
Thereafter	<u>423,800</u>
Total	<u>\$4,291,300</u>

## NOTE 9 - STOCKHOLDERS' EQUITY

Stockholders' equity was comprised of the following at December 31, 2009:

	Class A Common Stock					
	Authorized	Issued	Outstanding	Par Value	Shares in Treasury	
J.D. Byrider Systems, Inc.	10,000,000	8,471,912	8,356,037	\$0	115,875	
Byrider Sales of Indiana S, Inc.	10,000,000	8,510,695	8,394,670	\$0	116,025	
	Class B Common Stock					
	Authorized	Issued	Outstanding	Par Value	Shares in Treasury	
J.D. Byrider Systems, Inc.	90,000,000	76,247,208	76,247,208	\$0		
Byrider Sales of Indiana S, Inc.	90,000,000	76,596,255	76,596,255	\$0		
	Common Stock Class A	Common Stock Class B	Common Stock in Treasury	Notes Receivable from Stockholder	Additional Paid-in Capital	Retained Earnings (Deficit)
J.D. Byrider Systems, Inc.	\$ 30,433	\$ 273,893	\$ (335,606)	\$ (920,720)	\$1,480,390	\$61,088,340
Byrider Sales of Indiana S, Inc.	8,217	73,955	(321,228)	(590,746)	1,122,063	(7,016,933)
	<u>\$ 38,650</u>	<u>\$ 347,848</u>	<u>\$ (656,834)</u>	<u>\$ (1,511,466)</u>	<u>\$2,602,453</u>	<u>\$54,071,407</u>

Stockholders' equity was comprised of the following at December 31, 2008:

	Common Stock				
	Authorized	Issued	Outstanding	Par Value	Shares in Treasury
J.D. Byrider Systems, Inc.	55,000,000	8,471,912	8,356,037	\$0	115,875
Byrider Sales of Indiana S, Inc.	10,000,000	8,510,695	8,394,670	\$0	116,025
	Common Stock	Common Stock in Treasury	Notes Receivable from Stockholder	Additional Paid-in Capital	Retained Earnings (Deficit)
J.D. Byrider Systems, Inc.	\$ 304,326	\$ (335,606)	\$ (988,403)	\$1,473,153	\$53,544,055
Byrider Sales of Indiana S, Inc.	82,172	(321,228)	(637,107)	1,114,826	(8,561,927)
	<u>\$ 386,498</u>	<u>\$ (656,834)</u>	<u>\$ (1,625,510)</u>	<u>\$2,587,979</u>	<u>\$44,982,128</u>

Stockholders' equity was comprised of the following at December 31, 2007:

	Common Stock				
	Authorized	Issued	Outstanding	Par Value	Shares in Treasury
J.D. Byrider Systems, Inc.	55,000,000	8,471,912	8,400,037	\$0	71,875
Byrider Sales of Indiana S, Inc.	10,000,000	8,510,695	8,438,767	\$0	71,928
	Common Stock	Common Stock in Treasury	Notes Receivable from Stockholder	Additional Paid-in Capital	Retained Earnings (Deficit)
J.D. Byrider Systems, Inc.	\$ 304,326	\$ (192,948)	\$ (1,052,825)	\$1,467,307	\$41,714,711
Byrider Sales of Indiana S, Inc.	82,172	(178,571)	(681,235)	1,108,981	(2,454,537)
	<u>\$ 386,498</u>	<u>\$ (371,519)</u>	<u>\$ (1,734,060)</u>	<u>\$2,576,288</u>	<u>\$39,260,174</u>

## NOTE 10 - COMMITMENTS AND CONTINGENCIES

The Company has long-term operating lease agreements for land, land improvements, office space, certain office equipment and automobiles with unrelated entities. The leases have varying terms expiring from 2010 to 2015. Rental expense under the operating leases totaled approximately \$2,432,000, \$2,128,000, and \$1,994,000 for the years ended December 31, 2009, 2008, and 2007, respectively.

Future minimum payments for long-term lease obligations, exclusive of the related party leases discussed in Note 8, are as follows:

Payable In	Rental Payments
2010	\$1,644,000
2011	1,550,000
2012	1,374,000
2013	1,367,000
2014	1,185,000
Thereafter	<u>554,000</u>
Total	<u>\$7,674,000</u>

The Company is a party to various lawsuits and claims arising in the normal course of business. While the ultimate resolution of lawsuits or claims against the Company cannot be predicted with certainty, management is vigorously defending all claims and does not expect that these matters will have a material adverse effect on the financial position or results of the operations of the Company.

The Company is currently under examination by the Indiana Department of Revenue relating to sales and use taxes and has received an initial assessment of sales and use taxes for the years 2005 through 2008. The Company believes the assessment is without merit and is vigorously defending itself. A potential settlement cannot be reasonably estimated as of December 31, 2009.

## NOTE 11 - EMPLOYEE BENEFIT PLANS

The Company has a qualified trustee profit-sharing plan for its employees who have completed one year of service. The Company, subject to its right to amend or terminate the Plan, makes contributions to the Plan as determined by the Board of Directors, but such contributions may not exceed the amount deductible under the Internal Revenue Code. The Company has made no contributions to the Plan since its inception.

The Company also sponsors an employee 401(k) plan covering substantially all employees, as defined. Company contributions are based on a percentage of participant contributions to the Plan. The Company contributed approximately \$889,000, \$725,000, and \$826,000 for the years ended December 31, 2009, 2008, and 2007, respectively, to the Plan.

The Company has a partially self funded group health program. The Plan includes \$150,000 of specific stop loss insurance per individual per year with an aggregate limit of \$4,106,688.

## NOTE 12 - DEFERRED COMPENSATION PLAN

On January 1, 2005, the Company established the "J.D. Byrider Deferred Incentive Bonus Plan". The Plan calls for a payment in cash based on amounts awarded as approved by the Board of Directors. The vesting period of the awards is 50% over the first five years and the remaining 50% over a ten-year period. Compensation expense under the Plan was approximately \$31,000, \$96,000, and \$84,000, which was recorded in general and administrative expenses for the years ended December 31, 2009, 2008, and 2007, respectively.

### NOTE 13 - STOCK APPRECIATION RIGHTS PLAN

On January 1, 2005, the Company established the "J.D. Byrider Stock Appreciation Rights Plan". The Plan calls for a payment in cash based on the excess of the fair value of the rights as of the date specified over the fair value as of January 1, 2005, as determined by the Board of Directors. The vesting period of the awards is 50% over the first five years and the remaining 50% over a ten-year period. There was no compensation expense recognized pursuant to the Plan during 2009, 2008, or 2007.

### NOTE 14 - NOTES RECEIVABLE FOR STOCK

On January 1, 2005, the Company issued 500,000 shares of Systems' common stock and 500,000 shares of Sales' common stock to an existing stockholder. The common stock was purchased with a note receivable of \$2,030,000 with a maturity date of December 31, 2019, bearing interest at 5% per annum, with principal and interest payments due semi-annually. The balance of the note was \$1,511,466, \$1,625,510 and \$1,734,060 at December 31, 2009, 2008, and 2007, respectively.

### NOTE 15 - STOCK-BASED COMPENSATION

Systems and Sales maintain stock-based compensation plans which allow for the issuance of stock options for certain key employees and directors. The option term is 10 years with vesting requirements varying from employee to employee. Options granted under the plans have an exercise price equal to the fair value of the shares on the date of grant. As of December 31, 2009 659,625 Class A and 5,936,625 Class B and 559,528 Class A and 5,035,752 Class B shares were available to be issued under the plan for Systems and Sales, respectively.

As discussed in Note 1, effective March 30, 2009 the Company issued nine shares of Class B nonvoting shares for each Class A voting share issued and outstanding. As a result of this recapitalization, nine options to purchase Class B nonvoting shares were granted for each Class A voting option outstanding.

A summary of stock option activity for Systems for the year ended December 31, 2009 is as follows:

	Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (in Years)
Options outstanding-beginning of year	84,900	\$3.68	
Options canceled prior to recapitalization	(5,800)	3.25	
Options granted through recapitalization	711,900		
Options canceled after recapitalization	(81,000)	.38	
Options granted after recapitalization	<u>693,750</u>	<u>.19</u>	
Options outstanding-end of year	<u>1,403,750</u>	<u>.28</u>	<u>6.9</u>
Exercisable at December 31	<u>410,000</u>	<u>\$ .40</u>	<u>3.6</u>

The fair value of the options under the Plan was estimated at the date of grant using the Black-Scholes option valuation model. The following assumptions used in the valuation model for 2009 were a risk-free interest rate of 3.42%, a volatility factor of 48.85%, and a weighted average expected life of 10 years. The estimated fair value of the options is recorded as compensation expense over the related vesting period and was insignificant to the combined financial statements in 2009, 2008 and 2007.

**NOTE 15 - STOCK-BASED COMPENSATION (CONTINUED)**

A summary of stock option activity for Sales for the year ended December 31, 2009 is as follows:

	Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (in Years)
Options outstanding-beginning of year	84,900	\$3.68	
Options canceled prior to recapitalization	(5,800)	3.25	
Options granted through recapitalization	711,900		
Options canceled after recapitalization	(81,000)	.38	
Options granted after recapitalization	<u>694,720</u>	<u>.19</u>	
Options outstanding-end of year	<u>1,404,720</u>	<u>.28</u>	<u>6.9</u>
Exercisable at December 31	<u>410,000</u>	<u>\$ .40</u>	<u>3.6</u>

**NOTE 16 - FAIR VALUE OF FINANCIAL INSTRUMENTS**

The following estimated fair value amounts have been determined by the Company using available market information and other appropriate valuation techniques. These techniques are significantly affected by the assumptions used, such as the discount rate and estimates of future cash flows. Accordingly, the estimates made herein are not necessarily indicative of the amounts the Company could realize in a current market exchange and the use of different market assumptions and/or estimation methods may have a material effect on the estimated fair value amount.

**Cash and Cash Equivalents** - The carrying amount is a reasonable estimate of fair value.

**Receivables** - The fair value approximates carrying value as the retail installment contracts' rates are consistent with market rates for similar retail installment contracts for customers with similar credit risk profiles.

**Revolving Line of Credit, Notes Payable, Subordinated Notes Payable, and Subordinated Notes Payable-Related Parties** - The fair value is estimated by discounting future cash flows using rates available to the Company for advances of similar remaining maturities.

The following schedule includes the carrying value and estimated fair value of all financial assets and liabilities at December 31, 2009, 2008, and 2007:

	2009		2008		2007	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value	Carrying Amount	Fair Value
Cash and cash equivalents	\$ 934,556	\$ 934,556	\$ 973,820	\$ 973,820	\$ 1,625,774	\$ 1,625,774
Receivables-net	128,562,468	128,562,468	124,401,708	124,401,708	120,851,105	120,851,105
Revolving lines of credit	99,420,000	99,420,000	99,250,000	99,250,000	98,695,000	98,695,000
Notes payable	5,816,364	5,913,544	6,024,355	6,670,159	6,468,639	7,125,593
Subordinated notes payable					937,500	937,500
Subordinated notes payable related parties	3,121,083	3,332,514	6,959,571	7,247,314	6,959,571	6,798,554

## NOTE 17 - DISCONTINUED OPERATIONS

Due to continuing losses and poor portfolio performance, the Company closed one location in Georgia and one in Florida effective June 18, 2009 and August 2, 2009, respectively. The closed locations were in the business of selling automobiles to sub-prime customers and warehousing and servicing the related retail installment contracts. The Company has included both the sales and finance operations as discontinued operations.

The Company intends to collect the remaining installment contracts from customers over the next 36 months. The property and equipment of the discontinued locations is land and real estate associated with the Florida location. The Company intends to make this property available for sale when the installment contracts have been substantially collected.

The 2008 and 2007 financial statements have been reclassified to reflect the discontinued operations. Net revenue from the discontinued locations totaled \$14,380,176 in 2009, \$24,791,798 in 2008 and \$25,549,104 in 2007. Assets and liabilities of the closed locations consisted of the following at December 31:

	2009	2008	2007
Installment contracts, net	\$12,896,368	\$17,978,782	\$16,415,200
Inventories	8,641	1,444,843	1,506,407
Property & Equipment, net	<u>4,382,753</u>	<u>4,531,773</u>	<u>4,620,573</u>
Assets of discontinued locations	<u>\$17,287,762</u>	<u>\$23,955,398</u>	<u>\$22,542,180</u>
Accounts payable and accrued expenses	\$ 172,965	\$ 448,477	\$ 309,918
Notes payable	<u>2,835,564</u>	<u>2,982,992</u>	<u>3,119,084</u>
Liabilities of discontinued locations	<u>\$ 3,008,529</u>	<u>\$ 3,431,469</u>	<u>\$ 3,429,002</u>

800 East 96th Street  
Suite 500  
Indianapolis, IN 46240

Tel 317.580.2000  
Fax 317.580.2117

*Independent Auditors' Report  
on Combining Information*

Board of Directors and Stockholders  
J.D. Byrider Systems, Inc. and Byrider Sales of Indiana S, Inc.

Our report on our audit of the basic combined financial statements of J.D. Byrider Systems, Inc. and Byrider Sales of Indiana S, Inc. for 2009 appears on page 1. That audit was conducted for the purpose of forming an opinion on the basic combined financial statements taken as a whole. The accompanying combining information is presented for the purpose of additional analysis of the basic combined financial statements rather than to present the financial position and results of operations of the individual companies. Such information has been subjected to the auditing procedures applied in our audit of the basic combined financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic combined financial statements taken as a whole.

*Katz, Sapper & Miller, LLP*

Indianapolis, Indiana  
March 15, 2010



**J.D. BYRIDER SYSTEMS, INC. AND BYRIDER SALES OF INDIANA S, INC.**

**COMBINING SCHEDULE-BALANCE SHEET INFORMATION**  
December 31, 2009

**ASSETS**

	<b>J.D. Byrider Systems, Inc.</b>								
	<b>Byrider Sales of Indiana S, Inc.</b>			<b>Byrider Systems, Inc.</b>					
	Sales S	Capital	SPV	Systems	Franchising	Finance	Properties	Eliminations	Combined
<b>ASSETS</b>									
Receivables	\$ 77,260				\$ 2,394,539	\$ 163,573,763			\$ 166,045,562
Allowances for credit losses	(73,925)				(270,450)	(37,138,719)			(37,483,094)
Receivables, net	<u>3,335</u>				<u>2,124,089</u>	<u>126,435,044</u>			<u>128,562,468</u>
Cash	(193,623)				24,817	1,085,359	\$ 18,003		934,556
Accounts receivable-related parties	(5,875,969)	\$ (118,666)	\$ (89,206)	\$ 1,801,732	23,910,365	(19,946,798)	323,100	\$ 1	4,559
Inventories	10,852,146								10,852,146
Property and equipment, net	1,254,291		40,199	71,722	384,710	371,860	9,414,514		11,537,296
Assets of discontinued locations	4,383,064					12,904,698			17,287,762
Other assets	100,989			259,363	283,418	33,706	118,152	(274,362)	521,266
<b>TOTAL ASSETS</b>	<u>\$ 10,524,233</u>	<u>\$ (118,666)</u>	<u>\$ (49,007)</u>	<u>\$ 2,132,817</u>	<u>\$ 26,727,399</u>	<u>\$ 120,883,869</u>	<u>\$ 9,873,769</u>	<u>\$ (274,361)</u>	<u>\$ 169,700,053</u>

**LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)**

Revolving lines of credit borrowings	\$ 5,420,000					\$ 87,000,000			\$ 92,420,000
Notes payable	313,547						\$ 5,502,817		5,816,364
Subordinated notes payable-related parties	2,933,583								3,121,083
Trade accounts payable	1,195,073		\$ 196	\$ 187,500	\$ 444,565	103,466	4,831		1,748,131
Accrued expenses and taxes	4,195,304			915,203	1,626,607	972,535	160,239		7,869,888
Liabilities of discontinued locations	3,008,529								3,008,529
Deferred revenue					824,000				824,000
Total Liabilities	<u>17,066,036</u>		<u>196</u>	<u>1,102,703</u>	<u>2,895,172</u>	<u>88,076,001</u>	<u>5,667,887</u>		<u>114,807,995</u>
<b>STOCKHOLDERS' EQUITY</b>									
Class A common stock, no par value	8,217	\$ 5,000	10,000	30,433	71,802	910		\$ (87,712)	38,650
Class B common stock, no par value	73,955			273,893					347,848
Additional paid-in capital	1,122,063			1,041,465	588,316			(149,391)	2,602,453
Retained earnings (deficit)	(6,834,064)	(123,666)	(59,203)	940,649	23,172,885	32,806,958	4,205,882	(38,034)	54,071,407
Common stock in treasury at cost	(5,629,829)	(118,666)	(49,203)	2,286,440	23,833,003	32,807,868	4,205,882	(275,137)	57,060,358
Notes receivable from stockholder	(321,228)			(335,606)	(776)			776	(656,834)
Total Stockholders' Equity (Deficit)	<u>(590,746)</u>	<u>(118,666)</u>	<u>(49,203)</u>	<u>1,030,114</u>	<u>23,832,227</u>	<u>32,807,868</u>	<u>4,205,882</u>	<u>(274,361)</u>	<u>(1,511,466)</u>
<b>TOTAL LIABILITIES</b>									
<b>STOCKHOLDERS' EQUITY (DEFICIT)</b>	<u>\$ 10,524,233</u>	<u>\$ (118,666)</u>	<u>\$ (49,007)</u>	<u>\$ 2,132,817</u>	<u>\$ 26,727,399</u>	<u>\$ 120,883,869</u>	<u>\$ 9,873,769</u>	<u>\$ (274,361)</u>	<u>\$ 169,700,053</u>

**J.D. BYRIDER SYSTEMS, INC. AND BYRIDER SALES OF INDIANA S, INC.**

**COMBINING SCHEDULE-STATEMENT OF INCOME INFORMATION**  
Year Ended December 31, 2009

	Byrider Sales of Indiana S, Inc.						J.D. Byrider Systems, Inc.						
	Sales S	Capital	SPV	Systems	Franchising	Finance	Properties	Eliminations	Combined				
<b>REVENUE</b>													
Automobile sales	\$ 101,972,460								\$ 101,972,460				
Interest income	572,138								31,265,229				
Franchise fee and royalty income			\$ 35,819	\$ 141,068	\$ 15,716,380	\$ 30,693,091	\$ 1,216,139	\$ (2,884,056)	14,225,350				
Total Revenue	<u>102,544,598</u>		<u>35,819</u>	<u>141,068</u>	<u>15,716,380</u>	<u>30,693,091</u>	<u>1,216,139</u>	<u>(2,884,056)</u>	<u>147,463,039</u>				
<b>COSTS AND EXPENSES</b>													
Cost of revenue, including provision for credit losses on contracts receivable	89,812,813				484,944	983,844		(274,831)	91,006,770				
Interest expense	504,822			115,896		1,818,350	346,409		2,785,477				
Automobile sales and finance operating expenses	8,066,503					20,745,101		(2,470,416)	26,341,188				
General and administrative expenses		\$ 22	24,860	6,235,003	9,213,458		331,651	(1,200)	15,803,794				
Corporate and interest allocations	1,036,324	4,928	4,345	(6,301,921)	906,710	4,361,290	(11,676)						
Total Costs and Expenses	<u>99,420,462</u>	<u>4,950</u>	<u>29,205</u>	<u>48,978</u>	<u>10,605,112</u>	<u>27,908,585</u>	<u>666,384</u>	<u>(2,746,447)</u>	<u>135,937,229</u>				
<b>NET INCOME (LOSS) FROM CONTINUING OPERATIONS</b>													
Loss from operations of discontinued locations	3,124,136	(4,950)	6,614	92,090	5,111,268	2,784,506	549,755	(137,609)	11,525,810				
	<u>(1,580,805)</u>					<u>836,778</u>		<u>137,609</u>	<u>(606,418)</u>				
<b>NET INCOME (LOSS)</b>	<u>\$ 1,543,331</u>	<u>\$ (4,950)</u>	<u>\$ 6,614</u>	<u>\$ 92,090</u>	<u>\$ 5,111,268</u>	<u>\$ 3,621,284</u>	<u>\$ 549,755</u>	<u>\$ -</u>	<u>\$ 10,919,392</u>				

Form F

GUARANTEE OF PERFORMANCE

For value received J.D. Byrider Systems, Inc. located at  
12802 Hamilton Crossing Blvd.  
Carmel, IN 46032, absolutely and unconditionally

(Address)

guarantees the performance by Byrider Franchising, Inc.,  
12802 Hamilton Crossing Blvd.  
located at Carmel, IN 46032 of all of the

(Address)

obligations of Byrider Franchising, Inc. under its  
franchise registration in all states

dated 3/27/08 and of its Franchise

(Effective date of renewal)

Agreement. This guarantee continues until all obligations of Byrider Franchising, Inc. under the  
franchise registration and franchise agreement are satisfied.

is not discharged from liability if a claim by the franchisee against remains outstanding. Notice of  
acceptance is waived. Notice of default on the part of Byrider Franchising, Inc. is not waived. This  
guarantee is binding on J.D. Byrider Systems, Inc. and on its successors and assignees.

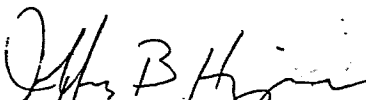
J.D. Byrider Systems, Inc. executes this guarantee at

(Parent)

Carmel, IN on the 27 day of March, 2008.

J.D. Byrider Systems, Inc.  
(Parent)

By:

  
Jeffrey B. Higgins

Title: VP/Secretary



**FRANCHISE AGREEMENT  
BETWEEN  
BYRIDER FRANCHISING, INC.**

**and**

\_\_\_\_\_  
**(Name of Franchisee)**

\_\_\_\_\_  
**(Street)**

\_\_\_\_\_  
**City State Zip Code**

\_\_\_\_\_  
**Area Code Telephone**

\_\_\_\_\_  
**Area Code Fax Number**

**BUSINESS LOCATION**

\_\_\_\_\_  
**t.b.d.**

**IDENTIFICATION #\_\_\_\_\_**

**BYRIDER FRANCHISING, INC.**  
**FRANCHISE AGREEMENT**

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**Exhibits**

Exhibit A	- Business Location
Exhibit B	- Royalty Calculations
Exhibit C	- State Law Addenda to Franchise Agreement
Exhibit D	- Personal Guaranty and Assumption of Franchisee's Obligations
Exhibit E	- J.D. Byrider Software Services and User Agreement
Exhibit F	- Disclosure Acknowledgment Statement

## FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (sometimes referred to herein as "Agreement") made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between Byrider Franchising, Inc., an Indiana corporation, having its principal office at 12802 Hamilton Crossing Blvd., Carmel, Indiana 46032 (herein called the "Company") and \_\_\_\_\_, having principal offices at \_\_\_\_\_ (herein called the "Franchisee").

### ARTICLE I

#### RECITALS

**1.1 Right to License.** The Company has the right to license the formats, systems, methods, procedures and standards for establishing, developing and operating a business offering used vehicles and, in connection therewith, financing services (herein sometimes called the "J.D. BYRIDER business" and the "CNAC CARNOW ACCEPTANCE business," respectively, and collectively the "System").

**1.2 The System.** The distinguishing characteristics of the System include, without limitation, a facility for the Business Location wherein such business is conducted; a system for establishing and operating a business for the offer and sale and service of used vehicles; a system for the financing of primarily used vehicles; J.D. BYRIDER Computer Software; exterior and interior design, decor, layout and color scheme; exclusively designed signage; confidential operating procedures; methods and techniques for inventory and cost controls, collections, record keeping, accounting and reporting, personnel management, purchasing, service and reconditioning, sales promotion, marketing and advertising all of which may be changed, improved and further developed by the Company from time to time. Also included in the system is a requirement that all franchisees offer a warranty program with the sale of every vehicle.

**1.3 The Trade/Service Marks.** The Company is the owner of and has the right to license the use of the name "CNAC CARNOW ACCEPTANCE COMPANY", "CNAC CARNOW ACCEPTANCE COMPANY plus the design", "J.D. BYRIDER SALES" and "J.D. BYRIDER SALES plus the design" and the trademarks, service marks, logos, and trade names now or hereafter used in connection with the System (herein called the "Marks").

**1.4 Grant of Licenses.** The Company grants to persons, who meet the Company's qualifications and are willing to undertake the investment and effort, a franchise to establish and operate a business using the System at a specified location(s) and a license to use the Marks in connection therewith.

**1.5 Agreement to Obtain/Grant Franchise.** The Franchisee desires a franchise to establish and operate a business using the System and the Company is willing to grant such a franchise on the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties, in consideration of the undertakings and commitments of each party to the other party, hereby agree as follows:

## ARTICLE II

### ACKNOWLEDGMENTS

To induce the Company to enter into this Agreement the Franchisee acknowledges, warrants and represents as follows. For franchisees in Maryland, such representations are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law if and to the extent the jurisdictional, definitional and other requirements of such law are met independently of, and without reference to, this Section.

**2.1 Independent Investigation.** The Franchisee has had the opportunity to conduct an independent investigation of the business opportunity offered hereunder and the terms and provisions of this Agreement. The Franchisee recognizes that the nature of the business described herein may evolve and change over time, that an investment in the franchise involves business risks and that the success of the venture depends primarily upon the Franchisee's business ability and efforts and other factors which are beyond the Company's control and which have nothing to do with the System or the Company's performance of its obligations under this Agreement.

**2.2 Existing Franchisees.** Prior to the execution of this Agreement, the Franchisee had the opportunity to contact all existing franchisees of the Company.

**2.3 No Representations Regarding Profits of the Franchise.** No representations have been made by the Company or by its officers, directors, shareholders, employees or agents, and relied upon by the Franchisee as to future or past income, expenses, sales volume or potential profitability, earnings or income of the business franchised hereby, or any other franchisee, other than information provided in Item 19 of the Company's Franchise Disclosure Document.

**2.4 No Representations Regarding Profits of the Company or System.** No representation or statement has been made by the Company or by its officers, directors, shareholders, employees or agents and relied upon by Franchisee regarding the anticipated income, earnings and growth of the Company or of the System, or the viability of the business opportunity being offered hereunder.

**2.5 Reservation of Rights by the Company.** The Company has certain rights reserved to it to own and operate J.D. BYRIDER businesses; to franchise other J.D. BYRIDER businesses; and, to otherwise use the System, the Marks, know-how, techniques and procedures.

**2.6 Different Franchise Agreements.** The Company has and reserves the right to grant franchises to other franchisees with terms different from this Agreement.

**2.7 Franchise Disclosure Document.** The Franchisee has received from the Company a copy of the Company's Franchise Disclosure Document, together with a copy of all proposed Agreements relating to the sale of the franchise, at least fourteen (14) calendar days, except in Michigan, Oregon, Oklahoma, Maryland, and New York, at least ten (10) business days, prior to the execution of this Agreement or the payment by the Franchisee to the Company of any consideration in connection with the sale or proposed sale of the franchise granted hereby.

**2.8 No Representation Regarding Licenses/Permits.** No representation or statement has been made by the Company, or by its officers, directors, shareholders, employees or agents and relied upon by the Franchisee regarding the Franchisee's ability to procure any required license or permit that may be necessary to the offering of one or more of the services contemplated to be offered by the business franchised hereby.

**2.9 The Franchisee's Advisors.** The Franchisee has been advised to consult with its own advisors with respect to the legal, financial and other aspects of this Agreement, the business franchised hereby, and the prospects for that business. The Franchisee has either consulted with such advisors or has voluntarily declined to do so.

**2.10 Covenants Not to Compete.** The covenants not to compete set forth in this Agreement are fair and reasonable, and will not impose any undue hardship on the Franchisee since the Franchisee has other considerable skills, experience and education which afford the Franchisee the opportunity to derive income from such other endeavors.

**2.11 The Franchisee Information.** The Franchisee affirms that all information set forth in any and all applications, financial statements and submissions to the Company is true, complete and accurate in all respects, with the Franchisee expressly acknowledging that the Company is relying upon the truthfulness, completeness and accuracy of such information.

### ARTICLE III

#### CERTAIN DEFINITIONS

**3.1 Advertising Fee.** The term "Advertising Fee" shall mean the fees discussed in Article X herein.

**3.2 Business.** The term "Business" shall mean each J.D. Byrider sales division complete with CNAC finance division at all Business Locations, utilizing, in connection therewith, the System and the Marks.

**3.3 Business Location.** The term "Business Location" shall mean the land and building premises, interior and exterior, from which the Business is operated. The Business shall be located in the area listed in Exhibit A.

**3.4 Confidential Information.** The term "Confidential Information" shall mean all confidential and/or secret information concerning the Company, the Business, or the System including, but not limited to, customer lists, names of customers and all information

developed by and/or for the Company and/or its affiliates, whether now owned or hereafter obtained, concerning plans, marketing and sales methods, customer relationships, materials, processes, procedures, devices utilized by the Company and/or its affiliates, business forms, costs, prices, suppliers, information concerning past, present or future contractors, representatives and past, present and/or future customers of the Company and/or its affiliates, plans for development of new or existing products, services and expansion into new areas or markets, internal operations and any variations, trade secrets, proprietary information and other confidential information of any type together with all written graphic, video and other materials relating to all or any part of the same.

**3.5 Franchisee.** The term "Franchisee" used in this Agreement shall refer to each person executing this Agreement as the Franchisee, and shall apply to each such person as if he/she were the only named Franchisee in this Agreement. If the Franchisee is a corporation, limited liability company, proprietorship, or other entity, or if more than one person executes this Agreement as the Franchisee, each proprietor or person executing this Agreement shall be jointly and severally liable for all obligations and duties of the Franchisee hereunder. If the Franchisee is a trust, each trustee or beneficiary signing this Agreement shall be jointly or severally liable for all the obligations and duties of the Franchisee hereunder. Notice to or demand upon one Franchisee shall be deemed notice to or demand upon all Franchisees.

**3.6 Gross Sales/Gross Receipts.** The term "Gross Sales" shall mean the full purchase price of all vehicles sold at retail (whether financed or sold for cash), including charges for extended service agreements, documentary fees, and all other fees or charges which accompany the sale, minus overallowances given on trade-in vehicles. For example, the customer's purchase price of the vehicle is \$10,000 and the customer has a trade in with an actual cash value of \$1,000 and assuming no extended service agreement or other charges. However, the Franchisee offers \$1,500 for the trade in. The "overallowance" is the amount offered of \$1,500 less the actual cash value of \$1,000 equaling \$500. Therefore, "Gross Sales" in this example is the full purchase price of \$10,000 less the overallowance of \$500 which equals \$9,500. Not included in "Gross Sales" are receipts from "wholesaled vehicles." Wholesaled Vehicles are defined as vehicles sold for resale and for which no sales tax is required.

The term "Gross Receipts" shall mean all monies received, such as payments from customer accounts, deferred down payments, payments from bulk sale of customer accounts, and including all other amounts received, except cash down payments received prior to delivery of the vehicle.

**3.7 Initial Franchise Fee.** The term "Initial Franchise Fee" shall mean Fifty Thousand (\$50,000) Dollars. For each additional franchise, Franchisee shall pay the then current fee.

**3.8 Royalty Fee.** The Royalty Fee commencement date is the earlier of the date the Business is open to the public or one (1) year from the execution of this Agreement. The term "Royalty Fee" shall mean that amount calculated monthly as follows:

- a. Gross Sales. The greater of \$6,000 and 2.5% of the Franchisee's Gross Sales (as defined above in Article 3.6) with a maximum monthly payment of: \$7,000.00 for "Founder Franchisees"; \$8,500.00 for "Interim Founder Franchisees"; or \$10,000.00 for "Standard Franchisees"; plus
- b. Gross Receipts. 1% of the Franchisee's Gross Receipts (as defined above in Article 3.6).

Notwithstanding the foregoing, the entire amount of the Royalty Fee due under subsections a and b combined shall not exceed \$96,000.00 per calendar year for Founder Franchisees, \$120,000.00 per calendar year for Interim Founder Franchisees, or \$144,000.00 per calendar year for Standard Franchisees ("Annual Royalty Cap").

The categories of "Founder Franchisees," "Interim Founder Franchisees," and "Standard Franchisees" are categories designated by the Company based upon when a particular franchisee executed its first franchise agreement with the Company. See Exhibit A for Franchisee's category designation.

- c. Multi Location Flat Rate (MLFR) Option. Franchisees with multiple franchise agreements may choose, by serving written notice to the Company, the Multi Location Flat Rate ("MLFR") option as described in Exhibit B. Franchisees selecting the MLFR option do not pay the royalties described in subsections a and b above. To participate, all franchisees of J.D. Byrider businesses participating in the MLFR option must have at least 51% in common equity ownership and voting control. In order to qualify for this MLFR option, Franchisee must submit documents to substantiate the required common ownership and voting control. Franchisee's election to use MLFR is for the remaining term of this Agreement and will not be modified unless Franchisee fails to continually operate at least two qualifying J.D. Byrider businesses, or fails to comply with the terms of this Agreement or any other agreement between Company and Franchisee (or its affiliates), in which case Franchisee's royalties will revert to those described in subsections a and b above.
- d. Volume Surcharge. In addition to the fees described above, in subsections 3.8 a, b, and c, Franchisee will pay a Royalty Fee surcharge of \$100 ("Volume Surcharge Amount") for every vehicle sold at retail (whether financed or sold for cash) in excess of 75 vehicles per Business Location per calendar month.

- e. Company reserves the right to increase the Annual Royalty Cap, the MLFR amounts set forth in Exhibit B, and the Volume Surcharge Amount by the most recently published National Consumer Price Index-All Urban Consumers – All Items (1982-1984 = 100) as most recently published by the U.S. Department of Labor, or a successor index. Any increase will be uniformly applied to all franchisees under the same form of franchise agreement. Company will notify Franchisee in writing on or before January 31 of each calendar year as to any changes in the amounts for such calendar year.

**3.9 Transfer Fee.** The term "Transfer Fee" shall mean Five Thousand (\$5,000) Dollars.

## **ARTICLE IV**

### **GRANT OF J.D. BYRIDER FRANCHISE**

**4.1 Grant of Franchise and License.** Subject to the terms and conditions herein, the Company hereby grants to the Franchisee, and the Franchisee hereby accepts from the Company, (A) a non-exclusive franchise to open and operate one Business and (B) a non-exclusive license to use the System and the Marks solely in connection with the operation of the Business. Termination or expiration of this Agreement shall constitute a termination of the foregoing franchise and license.

**4.2 Retention of Rights.** Except as explicitly and specifically granted to the Franchisee herein, all rights in and to the Marks, the System, and the Business and the goodwill associated with each of them is hereby reserved to the Company. Franchisee is not granted any rights by implication, innuendo, extension or extrapolation. Specifically, but without limitation, the Company retains the right, but shall not be obligated, to:

- A. Add new programs, products and/or services to the Business at any time;
- B. Establish, operate and franchise the System or any other programs, products and/or services under trade names, trademarks, service marks or logos other than the Marks;
- C. Use or license the use of the Marks in business other than the Business;
- D. Acquire the assets or ownership interests of one or more businesses providing products and services similar to those provided at the Business Locations, and franchising, licensing or creating similar arrangements with respect to these businesses once acquired, wherever these businesses (or the franchisees or licensees of these businesses) are located or operating;

E. Be acquired (whether through acquisition of assets, ownership interests or otherwise, regardless of the form of transaction), by a business providing products and services similar to those provided at the Business Locations, or by another business; and

F. Engage in all other activities not expressly prohibited by this Agreement.

Nothing in this Agreement limits the Company's rights to sell, distribute and/or to provide products and services of any kind, under the Marks or otherwise, anywhere except at the Business Location.

**4.3 Territorial Rights.** The Franchisee has no exclusive area or territory, except as stated in Exhibit A. The Business is granted for a specific location, or a location to be approved by the Company. The Franchisee may relocate the Business with the prior written approval of the Company without obligation to pay the Company an additional Initial Franchise Fee. However, the Franchisee is not entitled to the services of the Company in connection with such relocation and reopening without an agreement with the Company regarding the payment of the then current fees for such services plus the reimbursement of its expenses. The Company retains the right to locate other Businesses in the Franchisee's market, except in Franchisee's exclusive territory as shown in Exhibit A.

**4.4 The Franchisee's Restrictions.** The Franchisee expressly acknowledges that the territorial rights described in Section 4.3 confers upon the Franchisee no marketing exclusivity therein. The Franchisee expressly acknowledges and understands that all Businesses (whether company-owned, company joint-ventured, franchised or otherwise) may solicit and service clients and otherwise advertise and offer the services of their respective Business anywhere.

## ARTICLE V

### **TERM AND SUCCESSOR FRANCHISE AGREEMENTS**

**5.1 Term.** The Term of this Agreement shall be twenty (20) years (hereinafter "Term") commencing on the date this Franchise Agreement is executed.

**5.2 Right to Obtain Successor Franchise Agreements.** The Franchisee shall have the right to obtain one (1) additional successive franchise agreement for a term of twenty (20) years (the "Successor Franchise Agreement"), provided that the following conditions have been met: (The failure by the Franchisee to sign the agreements and the release described below within thirty (30) days after delivery thereof to the Franchisee or, if sooner, by the expiration of the Term shall be deemed an election by the Franchisee not to obtain such Successor Franchise Agreement.)

A. The Franchisee has given the Company written notice at least one hundred eighty (180) days prior to the end of the Term of its intention to obtain a Successor Franchise Agreement;



**B.** The Franchisee shall have the right to occupy the Business Location or such other location approved by the Company in writing, for a period ending not sooner than the expiration of the term of the Successor Franchise Agreement;

**C.** The Franchisee has complied with all the material terms and conditions of this Agreement and has complied with the Company's material operating and quality standards and procedures throughout the Term;

**D.** All monetary obligations owed by the Franchisee to the Company have been satisfied prior to such Successor Franchise Agreement and have been met, when due, throughout the Term;

**E.** The Franchisee agrees in writing to make, at its expense, such expenditures necessary to upgrade, remodel and redecorate the Business Location and the fixtures, equipment and supplies used in the Business to conform to the requirements of the System and the image of the Business at the commencement of the Successor Franchise Agreement;

**F.** The Franchisee executes the then current franchise agreement and other forms the Company is then requiring of new franchisees, which may contain rights and obligations which are materially different than those contained in this Agreement, except that the Franchisee will not be required to pay an Initial Franchise Fee;

**G.** The Franchisee executes and delivers to the Company a written general release (except as may be limited by law) of all claims and demands against the Company, its officers, directors, representatives and affiliates provided, however, that all rights enjoyed by the Franchisee mandated by applicable state law shall remain in force; and

**H.** The Franchisee has settled or resolved all pending claims and demands against it by any governmental agency or authority.

**5.3 Form and Manner of Exercising Right to Obtain a Successor Franchise Agreement.** The Franchisee shall exercise its right to obtain a Successor Franchise Agreement in the following manner: Not more than three hundred sixty (360) days or less than one hundred eighty (180) days before the expiration of the Term, the Franchisee shall give the Company written notice of its desire to obtain a Successor Franchise Agreement. Within ninety (90) days after its receipt of Franchisee's notice, the Company shall furnish the Franchisee with written notice of (i) the reasons which would cause the Company not to grant a Successor Franchise Agreement including, but not limited to, any deficiencies which require correction and a schedule for correction thereof by the Franchisee, and (ii) the Company's then-current requirements relating to the image, appearance, declaration, furnishing and equipping a Business and a schedule for effecting upgrading or modifications in order to bring the Business in compliance therewith as a condition of obtaining a Successor Franchise Agreement. The obtaining of a Successor Franchise Agreement shall be conditioned upon the Franchisee's compliance with such requirements and continued compliance with all terms and conditions of this Agreement through the expiration of the Term.

## ARTICLE VI

### SERVICES OF THE COMPANY

#### Pre-Opening.

##### **6.1 Initial Training Program and Computer System Installation.**

A. Prior to the opening of the Business, the Franchisee, and its general manager, sales manager, finance manager, controller, and service manager (collectively, the "Franchisee's Managers"), shall attend and complete, to the Company's satisfaction, the Company's Initial Training Program. The Initial Training Program shall be conducted at the Company's principal offices, or at such other place as the Company shall designate. The Initial Training Program shall cover all material aspects of the operations of the Business, but the content, format and duration of the Initial Training Program shall be entirely within the discretion and determination of the Company. While the actual training courses are provided at no expense to the Franchisee, all expenses incurred by the Franchisee and its designated employees in attending such Initial Training Program including, without limitation, wages, benefits, travel, room and board expenses shall be the sole responsibility of the Franchisee.

B. If the Company determines that the Franchisee or its managers are unable to satisfactorily complete the Initial Training Program, the Company shall have the right to terminate this Agreement in the manner provided herein. Upon such termination, the Franchisee shall, and does hereby fully and forever release the Company from any claims or causes of action the Franchisee may have under or pursuant to this Agreement and the Franchisee shall have no further right, title or interest in the Business, the Marks or the System.

C. In addition, the Company will install Franchisee's computer system prior to the opening of business.

**6.2 Specifications for Building, Equipment, Signs and Supplies.** Before commencement of the construction at the Business Location, the Company shall deliver to the Franchisee specifications for the building, equipment, furnishings, decor, layout and signs required to open and operate the Business. The Company shall also provide the Franchisee with lists of approved suppliers and sources of supply.

##### **6.3 Confidential Operating Manual.**

A. The Company shall loan the Franchisee one (1) copy of the Company's Confidential Operating Manual (sometimes, together with all supplements to or revisions of, herein the "Manual") for use during the Term. In addition to one hard copy of the Manual provided to Franchisee, an online Manual is provided on the Company's website. All periodic modifications to the Manual are made to the online copy only, and Franchisee agrees to view the website monthly for modifications. Franchisee agrees that the Manual and any updates to the Manual are part of this Agreement as if fully set forth within its text. Franchisee acknowledges that Company's periodic modification of the Manual (including, without limitation, changes to

the hardware and software required for the Company's computer system), which may accommodate regional and/or local variations, may obligate Franchisee to invest additional capital in the Business Location and/or incur higher operating costs.

**B.** The Franchisee shall conduct the operation of the Business in compliance with the Company's operational systems, standards, procedures, methods and requirements as prescribed from time to time in the Manual.

**C.** The Manual contains specifications, standards, operating procedures and rules prescribed from time to time by the Company for the Business and information relative to other obligations of the Franchisee hereunder and the operation of the Business.

**D.** The Manual contains proprietary information of the Company and shall be kept confidential by the Franchisee both during the Term and subsequent to the expiration or termination of the Franchise. The Franchisee shall not duplicate or cause the Manual to be duplicated or used for any purpose other than the operation of the Business at the Business Location in accordance with this Agreement.

**E.** The Manual shall at all times remain the property of the Company and shall be returned to the Company upon the expiration or other termination of this Agreement unless a Successor Franchise Agreement is duly executed by both parties, in which case, Franchisee may retain the Manual subject to the terms and conditions of the Successor Franchise Agreement.

**F.** The Franchisee shall at all times ensure that the Franchisee's copy of the Manual is current and up-to-date. In the event of any dispute as to the Franchisee's compliance with the provisions of the Manual the terms of the master copy of the Manual maintained by the Company at the Company's principal office shall be controlling. The Franchisee shall keep the Manual on the Business Location at all times.

**6.4 Company's Site Approval.** The Franchisee is responsible for purchasing or leasing a suitable site for the Business. Prior to the acquisition by lease or purchase of any such site, the Franchisee shall submit a description of the proposed site and other requested information to the Company together with a letter of intent or other evidence satisfactory to the Company that confirms the Franchisee's favorable prospects for obtaining the proposed site. The Company will provide the Franchisee with written notice of approval or disapproval of the proposed site within thirty (30) days after receiving the Franchisee's written proposal. The Company's approval of the site is subject to the provisions of Section 7.1 of this Agreement.

**6.5 Company Approval of Business Location.** If the Business Location has been completed in accordance with the Company's requirements and the Franchisee and the Franchisee's Managers have satisfactorily completed the Company's Initial Training Program, then the Company shall approve the Business Location for opening.

## **Post Opening**

**6.6 On-Site Assistance.** If the Business opened pursuant to this Agreement is the first Business Location opened by Franchisee or its affiliates, during the first week that the Business is open for business, the Company shall provide at least one (1) of the Company's representatives at the Business Location for the purpose of facilitating the opening of the Business. The number of days of this on-site assistance and the designation of the person(s) on-site will be at the Company's discretion. On-site assistance for additional Business Locations will be provided as the Company deems appropriate to the circumstances. During this period such representative(s) will assist the Franchisee in establishing and standardizing procedures and techniques essential to the operation of the Business and shall assist Franchisee in training its personnel. If the Franchisee requests additional assistance from the Company in order to facilitate the opening of the Business, and if the Company deems it necessary and appropriate, the Franchisee shall pay the Company its customary fees (currently One Thousand (\$1,000) Dollars) per day for such services and reimburse the Company for expenses incurred by the Company in providing such additional assistance.

**6.7 Grand Opening.** In addition to the initial assistance provided to the Franchisee, the Company may, during the first three (3) months of operation of the Business, provide the Franchisee with guidance in marketing and promotions in connection with the Grand Opening.

**6.8 Additional Training.** The Company may, from time to time, require that previously trained and experienced franchisees or their managers attend and successfully complete additional training programs to be conducted at the Company's principal offices or other location chosen by the Company. Franchisee shall pay for all its and its employees' travel and lodging expenses. The Franchisee and/or the Franchisee's employee(s) shall attend such programs or seminars at the Franchisee's expense. In those instances where the Company determines, in its sole discretion, that the quality of the Franchisee's work or the work of its employees is not in accordance with the quality standards established by the Company for the System, the Company shall have the right to require that the Franchisee, and/or such of the Franchisee's employees as fail to meet such quality standards, undergo a retraining program at the Company's training facility designed to correct such deficiency.

**6.9 Guidance.** During the operation of the Franchisee's business the Company will:

- A. Inspect the Business as often as the Company deems necessary;
- B. Make its staff available at its principal offices for consultation and guidance of the Franchisee in the operation and management of the Business.
- C. Make available to the Franchisee, from time to time, all changes, improvements, and additions to the System to the same extent as made available to other franchisees of the System and Marks;

- D. Provide the Franchisee with all supplements and modifications to the Manual;
- E. Provide, from time to time, consultation and guidance in advertising and marketing;
- F. Provide the Franchisee with forms to be used by the Franchisee to report to the Company all information required by the Company;

**6.10 Operating Assistance-Inspections.** The Company shall have the right to enter and inspect the Business Location at all reasonable times to observe the manner in which the Franchisee is operating the Business, to confer with the Franchisee's employees, vendors, suppliers, and customers and to ascertain that the operations of the Business comply with the performance standards established by the Company for the System. The Franchisee will cooperate with the Company and will promptly undertake to correct any deficiencies brought to the Franchisee's attention. The Franchisee will reimburse the Company for reasonable costs and expenses the Company may incur in correcting deficiencies that the Franchisee, after notice, fails to correct.

**6.11 Annual Meetings.** The Company, in its discretion, will hold three meetings each year, and the Franchisee or representative must attend. The Company will notify Franchisee of the dates and locations of these meetings, and Franchisee will be responsible for its own transportation and lodging and prorated expenses that are associated with attending these meetings. The Company reserves the right to refuse or place additional conditions on attendance at these meetings by anyone other than Franchisee and to increase or decrease the number of meetings.

## **ARTICLE VII**

### **OPENING AND OPERATION OF THE BUSINESS**

**7.1 Business Location.** The Franchisee shall operate the Business only at the Business Location. If the Business Location is identified on Exhibit A, it has been approved by the Company, and Franchisee acknowledges and agrees that the Company has performed all of its obligations under this Agreement with respect to site selection or approval. If the Business Location is not identified on Exhibit A, the Franchisee shall bear the entire responsibility of finding, and shall use its best efforts to find, a site acceptable to the Company utilizing its own resources, skills and know-how, and following any requirements set forth by the Company. The selection of the Business Location shall be subject to the prior written approval of the Company whose determination in this regard shall be final.

As a condition precedent to approving any location proposed by the Franchisee, the Company may require the Franchisee to submit site analyses, maps, completed check lists, photographs, digital or video motion pictures of the site and surrounding areas, copies of proposed leases, diagrams of the Business Location with measurements, a letter of intent or other evidence of the Franchisee's favorable prospects of obtaining the proposed location, and such

further information and materials as the Company may reasonably require to evaluate the Franchisee's proposed location.

The Franchisee expressly understands that the securing of the Business Location within six (6) months following execution of this Agreement, the prior written approval of the location by the Company, the execution of a lease, and opening for business within one (1) year following the execution of this Agreement are of the essence of this Agreement.

The Company may, but is not obligated to, (A) select, secure and propose to the Franchisee suitable location(s) which the Franchisee, in its sole discretion, may select as the Business Location, and (B) to lease any location selected by the Franchisee and sublet such location to the Franchisee.

The Franchisee acknowledges and agrees that the Company's engaging in such site selection activities, the Company's suggestions, the exercise of its rights of approval provided herein, or the exercise of its right to lease said Business Location and sublease the same to the Franchisee and to derive profit therefrom, shall not give rise to any liability of the Company with regard to the viability of any location(s) selected, proposed or approved by the Company, nor shall the same be construed as any express or implied representation, warranty or guarantee by the Company of the suitability for or viability, prospects or profitability of any such location for a Business.

## **7.2 Construction of Business Location.**

**A.** The Franchisee agrees that promptly after securing the Business Location, it will: (i) cause to be prepared and submitted for approval by the Company, a site survey and any modifications to the Company's basic plans and specifications for a Business Location (including requirements for dimensions, exterior design, materials, interior design and layout, equipment, fixtures, furniture, signs and decorating) for sales, finance, and service departments required for the development of a Business Location at the site leased or purchased therefore. The Franchisee may modify the Company's basic plans and specifications only to the extent required to comply with all applicable ordinances, building codes, and permit requirements, and with prior notification to and approval by the Company; (ii) obtain all required zoning changes; all required building, utility, health, sanitation, and signed permits and licenses, and any other required permits and licenses; (iii) purchase or lease and install all equipment, fixtures, furniture, and signs required by the Company; (iv) complete the decorating of the Business in full and strict compliance with the plans and specifications therefor approved by the Company and all applicable ordinances, building codes, and permit requirements; (v) obtain all customary contractors sworn statements and partial and final waivers of lien for construction, remodeling, decorating, and installation services; and (vi) otherwise complete the development of and have the Business ready to open and commence the conduct of its business as required.

**B.** The Franchisee is strictly responsible for the acts or omissions of its contractors regarding compliance with this Article VII and the Company shall have no responsibility for such acts or omissions. The Company shall not be liable for any loss or

damage arising from the plans or specifications for the Business Location by reason of its approval of plans and specifications, or otherwise.

**7.3 Location Lease or Purchase Agreement.** Upon the written approval of the proposed Business Location, the Franchisee shall execute a lease (if the Business Location is to be leased) or a binding agreement to purchase the site, the terms of which shall have been previously submitted to the Company for approval. The Company's approval of the lease may be conditioned upon the inclusion in the lease of terms acceptable to the Company and, at the Company's option, shall contain such provisions as the Company may require including, but not limited to: (i) a provision which requires the lessor concurrently to provide the Company with a copy of any written notice of deficiency under the lease sent to the Franchisee and which grants the Company, in its sole discretion, the right, but not the obligation, to cure any deficiency under the lease, should the Franchisee fail to do so, within thirty (30) business days after the expiration of the period in which the Franchisee may cure the default; (ii) a provision which evidences the right of the Franchisee to display the Marks in accordance with the specifications required by the Manual or Company policies, subject only to the provisions of applicable law; (iii) a provision which grants the Company the right, but not the obligation, to assume the obligations of and replace the Franchisee as lessee under the lease in the event of the expiration or termination of this Agreement for any reason; (iv) a provision that the Business Location be used only for the operation of a Business; and (v) a provision which grants the Company the right to enter the Business Location and remove signage and other identification containing the Marks in the event of the expiration or termination for this Agreement for any reason. Franchisee may request assistance from the Company to negotiate a proposed lease prior to execution. The Company may provide such assistance in its discretion.

**7.4 Opening for Business.** The Franchisee shall give the Company at least sixty (60) days prior written notice of the opening of the Business ("Notice of Opening"). If such notice is not given, the Company shall be relieved of its obligation to provide the assistance in connection with the opening of the Business (provided in Section 6.6 hereof). The Franchisee shall not open the Business until the Company determines that the construction of and other preparation of the Business Location have been completed in accordance with this Agreement and that the Franchisee and the Franchisee's Manager(s), if any, have completed the Company's Initial Training Program. Within three (3) months after opening for business the Franchisee shall prepare and submit for the Company's prior approval a Grand Opening advertising and promotion program for the Business and shall, at the Franchisee's expense, implement such program during the Grand Opening.

**7.5 Maintain Standards, Upgrades.** In order to protect the System and to maintain the uniform standards of operation under the franchise granted herein, the Franchisee shall operate the Business at all times in strict compliance with the requirements of this Agreement, the Manual, and Company policies. Franchisee shall have control over the day-to-day operations of the Business. Further, the Company may require Franchisee to upgrade the Business Location consistent with the Company's standards. All costs of maintaining and upgrading are borne by the Franchisee. Without limiting the foregoing, Franchisee acknowledges and agrees that Franchisee will be required to update the Business Location to meet the Company's then current standards on the seventh (7th) and fourteenth (14th) anniversary of the

date of this Agreement (the “Facility Updates”). For each Facility Update, Franchisee is required to ensure OSHA compliance and upgrade the following exterior and interior items:

**Exterior**

asphalt/concrete/striping  
light poles/lights  
paint  
landscaping  
fencing

**Interior**

flooring  
ceiling  
wall paint  
furniture  
lighting

For the 14th anniversary Facility Update, Franchisee shall replace all exterior signage in addition to the above-listed exterior and interior items.

The maximum cost of such updates will not exceed \$150,000 per Facility Update, except that the cost of sign replacements required for the 14<sup>th</sup> anniversary Facility Update shall be in addition to the \$150,000 maximum. Franchisee further acknowledges and agrees that its upgrading requirements hereunder are not limited to the Facility Updates and that it has an ongoing obligation during the term of this Agreement to meet Company’s standards, as required by the Company.

**7.6 Use of Business Location.** The Business Location shall be used solely for the purpose of conducting a Business unless another use is specifically approved in writing by the Company.

**7.7 Approved Suppliers.** The Franchisee will purchase, from either the Company, or vendors and suppliers approved by the Company, all equipment, supplies, and other products and services which the Company determines meet the standards of quality and uniformity required to protect the valuable goodwill and uniformity symbolized by and associated with the Business, as set forth in the Manual. The Company reserves the right to approve a single supplier for any item and such supplier may be the Company and/or its affiliates. If the Franchisee desires to purchase any products or services from any other source, the Franchisee shall submit samples and specifications to the Company for testing to determine whether the products or services comply with the Company's standards and specifications. The prior written approval of the Company must be obtained by the Franchisee prior to the time that any unapproved products or services are used or sold by the Franchisee. The Company shall notify the Franchisee, within thirty (30) days of receipt of the Franchisee's request, of its rejection of the proposed vendor or supplier and the reason therefor. The failure to so notify the Franchisee shall constitute approval by the Company.

**7.8 Compliance with Laws.** The Franchisee shall, at its expense, secure and maintain in force all required licenses, permits, and certificates relating to the operation of the Business and shall operate the Business in strict compliance with all applicable local, state and federal laws, rules and regulations, including, but not limited to, used-vehicle sales laws, Truth-in-Lending laws, Equal Credit Opportunity laws, employment laws, and also including full legal compliance of all customer vehicle sale and finance transaction documents. The Franchisee agrees to promptly resolve any action, suit, proceeding, investigation or inquiry, or the issuance



of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality which may adversely affect the operation or financial condition of the Business. The Franchisee agrees to refrain from any merchandising, advertising or promotional practice that is unethical or may be injurious to the business of the Company, other Businesses or to the goodwill associated with the Marks.

**7.9 Payment of Liabilities and Taxes.** The Franchisee shall pay, when due, all of its obligations, liabilities and taxes to the Company, suppliers, lessors, creditors and taxing authorities. The Franchisee's failure to comply with this provision shall be deemed a material breach of this Agreement.

**7.10 Standardization.** The Franchisee will require its employees to wear such uniforms as may be designated by the Company and will comply with such programs of standardization as may from time to time be promulgated by the Company to promote the common business image and to protect the goodwill associated with the Business. The Business will be open for at least the same hours as new car businesses in Franchisee's market.

**7.11 Management.** The Business shall be at all times under the direct, on-location supervision of the Franchisee or a trained and competent employee acting as a full-time manager, approved by the Company, who shall have completed the Company's Initial Training Program (a "Manager"). If the Franchisee operates more than one franchise, or in the event the Franchisee does not devote full-time to conducting the Business, at least one Manager, approved by the Company, shall be appointed by Franchisee to act as a full-time Manager at each Business Location. The Franchisee shall keep the Company informed at all times of the identity of the Manager of the Business. The Franchisee shall at all times faithfully, honestly and diligently perform the obligations hereunder, use its best efforts to promote and enhance the Business, and shall not engage in any business or other activity that will conflict with the Franchisee's obligations hereunder.

**7.12 Employee Training.** The Franchisee or the Franchisee's Managers shall train all employees conducting those certain functions set forth in the Manual with the training required for such functions set forth in the Manual.

**7.13 Unauthorized Activities.** The Franchisee shall not install or maintain on the Business Location any telephone booths, newspaper racks, video games, juke boxes, games, rides, or other similar devices, or undertake any business activity other than the Business, without the prior written approval of the Company.

**7.14 Notice to the Company.** The Franchisee shall notify the Company in writing immediately on becoming aware of the commencement of any action, suit, proceeding, investigation or inquiry, or the issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality or receipt of written complaints from any customer or potential customer that may adversely affect the operation or financial condition of the Business. If the Company believes the Franchisee is not adequately responding to or handling any event listed above, the Company reserves the right to require the Franchisee to

resolve the matter in a prompt and reasonable manner in accordance with good business practices.

**7.15 Modifications to the System.** The Franchisee understands that due to changes in competitive circumstances, presently unforeseen changes in the needs of customers, and/or presently unforeseen technological innovations, the System may change in order that it best serve the interest of the Company, the Franchisee and the System. Accordingly, the Franchisee agrees that the Company may from time to time A) change the components of the System, including, but not limited to, altering the programs, services, methods, standards, equipment, decorations, policies and procedures of the System; B) add to, delete from, or modify those programs and services which the Business is authorized to offer; and C) change, improve or modify the Marks. The Franchisee agrees to make any such modifications, changes, additions, deletions and alterations, promptly, and at the franchisee's expense.

**7.16 Confidential Information.**

**A.** The Franchisee acknowledges that its entire knowledge of the operation of the Business is derived from information disclosed to the Franchisee by the Company and that certain of such information is proprietary, confidential, unique, special, and a trade secret of the Company. The Franchisee agrees that it will maintain the absolute confidentiality of all such proprietary and Confidential Information during and after the Term and that it will not use any such information in any other business or in any manner unless specifically authorized or approved in writing by the Company.

**B.** The Franchisee shall divulge such proprietary and Confidential Information only to such of its employees as must have access to it in order to operate the Business in accordance with this Agreement. Any and all information, knowledge, and know-how including, without limitation, materials, computer systems, techniques, and other data, which the Company designates as confidential shall be deemed confidential for purposes of this Agreement, except information which the Franchisee can demonstrate came to its attention prior to the disclosure thereof by the Company or which, at the time of disclosure by the Company to the Franchisee, had become a part of the public domain through publication or communication by others without Franchisee's fault or involvement; or which after disclosure to the Franchisee by the Company, becomes a part of the public domain through publication or communication by others without Franchisee's fault or involvement.

**C.** Due to the special and unique nature of the proprietary and Confidential Information, the Marks, and the Manual, the Franchisee hereby agrees that the Company shall be entitled to immediate equitable remedies including, but not limited to, restraining orders and injunctive relief in order to safeguard any proprietary, confidential, unique and special information of the Company and that money damages alone would be an insufficient remedy with which to compensate the Company for any breach of the terms of Article XVIII and Sections 6.3 and 7.16 hereof. Furthermore, the Franchisee agrees that all employees of the Franchisee having access to the confidential and proprietary information of the Company shall be required to execute confidential information covenants in a form acceptable to the Company.

**7.17 Customer Service Survey.** Franchisee is required to pay for a monthly customer service survey performed by the Company or its designee.

## **ARTICLE VIII**

### **TRADEMARKS**

**8.1 Ownership.** The Franchisee acknowledges the validity of the Marks and that they are the sole property of the Company. The Franchisee's right to use the Marks is derived solely from this Agreement and is limited to the conduct of the Business by the Franchisee pursuant to and in compliance with this Agreement and all applicable standards, specifications and operating procedures prescribed by the Company from time to time. Any unauthorized use of the Marks by the Franchisee is a breach of this Agreement and an infringement of the rights of the Company. All usage of the Marks by the Franchisee and any goodwill established by the Franchisee's use of the Marks shall be the exclusive property of the Company.

**8.2 Use.** The Franchisee shall use the Marks only as authorized, directed or approved by the Company. The Franchisee shall not use the Marks as part of any corporate or trade name, or with any prefix, suffix, or other modifying words, terms, designs, or symbols, or in any modified form, nor may the Franchisee use the Marks in connection with the sale of any unauthorized product or service or in any other manner not expressly authorized by the Company. The Franchisee shall not use the Marks as part of any domain name, homepage, electronic address, user name, user profile or otherwise in connection with a website (unless approved by the Company), including, without limitation, in connection with any social networking site which references or identifies the Business, Business Location or Franchisee as a part of the System. The Franchisee shall give such notice of trademark and service mark registration as the Company specifies and to obtain such fictitious or assumed name registrations as may be required under applicable law. The non-exclusive personal right of the Franchisee to use the Marks in connection with the Business and its right to use the Marks and the System apply only to the Business Location and only so long as the Franchisee shall fully perform and comply with all of the conditions, terms and covenants of this Agreement. If, in the judgment of the Company, the acts of the Franchisee infringe upon or demean the goodwill, standards of uniformity or quality, or business standing associated with the Marks and the System, then the Franchisee shall immediately, upon notice from the Company, modify its use of the Marks and the System in the manner prescribed by the Company. The Franchisee shall not, during or after the Term, do anything directly or indirectly which would infringe upon, harm, mislead or contest the rights of the Company in the Marks or the System.

**8.3 Infringement.** The Franchisee shall immediately notify the Company in writing of any apparent infringement of or challenge to the Franchisee's use of the Marks and of any claim by any person of any rights in the Marks or in any similar trade name, trademark, service mark or logo of which the Franchisee becomes aware. The Franchisee shall not directly or indirectly communicate with any person other than the Company, Company's counsel and its counsel in connection with any such infringement, challenge or claim. The Company shall have sole discretion and exclusive right to take such action as it deems appropriate to control any

litigation, U.S. Patent and Trademark Office proceeding or other administrative proceeding arising out of such infringement, challenge or claim or otherwise relating to the Marks. The Franchisee shall execute any and all instruments and documents, render such assistance, and do such acts and things as may, in the opinion of the Company's counsel, be necessary or advisable to protect and maintain the interests of the Company in any such litigation or administrative proceedings, or to otherwise protect and maintain the interest of the Company in the Marks.

**8.4 Substitutions.** If there is a claim by any party that its right to any use of the Marks are superior and if the Company determines that such claim is legally meritorious or if the Company determines, in its sole discretion, that it is advisable for the Company and/or the Franchisee to modify or discontinue the use of any of the Marks, and/or use one or more additional or substitute Marks then, upon notice from the Company, the Franchisee, at its expense, will immediately make such changes and amendments to the Marks and all materials on which the Marks are displayed as may be required by the Company.

## **ARTICLE IX**

### **FEES**

**9.1 Initial Franchise Fee.** The Franchisee shall pay to the Company the Initial Franchise Fee of Fifty Thousand (\$50,000.00) Dollars upon the execution of this Agreement. The Initial Franchise Fee shall be refundable only in the event the Company receives written notice from Franchisee of its desire to rescind the Agreement. This notice of rescission must be received by the Company within 60 days after the Agreement has been executed. In all other cases, the fee is nonrefundable.

**9.2 Royalty and Advertising Fee.** In addition to the Initial Franchise Fee, the Franchisee shall pay the Royalty Fee defined in Article 3.8 to the Company, and Advertising Fee defined in Article 10 to J.D. Byrider Advertising Group, Inc., without offset, credit, or deduction of any kind, in the manner set forth in Section 9.3 or otherwise prescribed in the Manual from time to time. In the event of a natural disaster (such as a flood, fire, or tornado) or some other unusual occurrence that prevents Franchisee from operating the Business, the Company will consider various forms of relief on a case-by-case basis in its sole discretion.

### **9.3 Payment.**

**A.** The Franchisee shall pay all invoices from the Company, J.D. Byrider Advertising Group, Inc., and all other vendors when due.

**B.** All Royalties, Advertising Fees and other amounts that the Franchisee owes to the Company or its affiliates shall bear interest after the due date at the highest legal rate for open account business credit. The Franchisee acknowledges that this paragraph shall not constitute an agreement by the Company or its affiliates to accept such payments after the same are due or a commitment by the Company to extend credit to or otherwise finance the Franchisee's operations of the Business. Acceptance by the Company of any payment by the Franchisee in an amount less than the full amount due shall not constitute acceptance as payment

in full and shall not constitute a waiver of any amounts remaining due to the Company. Further, the Franchisee acknowledges that its failure to pay all amounts when due shall constitute grounds for termination of this Agreement as provided herein notwithstanding the provisions of this paragraph.

C. Notwithstanding any designation by the Franchisee, the Company shall have the sole discretion to apply any payments by the Franchisee to any past due indebtedness of the Franchisee for Royalty Fees, Advertising Fees, purchases from the Company, interest or any other indebtedness of the Franchisee.

**9.4 Computer System Fees.** Concurrently with the execution of this Agreement, Franchisee has executed the J.D. Byrider Software Services and User Agreement which is attached hereto as Exhibit E (the "Software Agreement"). The Company's computer system is made up of three components: 1) JDB Proprietary Software, 2) off-the-shelf software, and 3) hardware. Franchisee must license and use the JDB computer system necessary to operate day-to-day business. Franchisee must pay the cost of the computer system as shown on Exhibit E, Appendix B, upon receiving invoices. In addition, Franchisee is responsible for all costs related to communication lines between each franchise and the Company. Exhibit E, Appendix A, identifies the items that are typically required per franchised location. The Company may at times allow for substitution of items in Appendix A at the request of Franchisee if a substitution will not materially impact the Company's delivery of services or support, but is under no obligation to do so.

**9.5 Starter Kit Fee.** The Franchisee shall purchase the Company's starter kit at the then current price. The starter kit includes monitoring, control boards, and other internal decorations.

## ARTICLE X

### ADVERTISING AND PROMOTION

**10.1 Advertising Fee.** Franchisee shall contribute \$1,000.00 for each Business Location each month to J.D. Byrider Advertising Group, Inc. (the "Ad Group"). All amounts received by the Ad Group will become the exclusive property of the Ad Group. The Ad Group will hold such amounts for the benefit of the Company and all Franchisees and will be expended exclusively for the promotion and advertising of the business of the Company and all franchisees of the System and Marks, consistent with this Agreement, in such manner and amounts as determined by the Board of Directors of the Ad Group, acting in its sole discretion, but within the limitations stated above. The advertising and promotional expenditures which may be made by the Ad Group include any costs of maintaining, administering, directing and preparing promotional materials, advertising and similar public relations activities for use in television, radio, billboards, magazines, newspapers and any other medium, such costs to include fees for advertising agencies and consultants and reasonable fees for any management or administrative services rendered by the Company to the Ad Group in connection with the undertakings by the Ad Group.

Upon request by the Company, Franchisee shall also join one or more Company-approved local advertising co-ops and make contributions to such co-ops as required under the co-op's bylaws. Contributions to a co-op will be credited toward the two percent (2%) advertising requirement discussed below.

In addition, Franchisee shall spend at least two percent (2%) of Gross Sales on co-op or local advertising. The Company reserves the right to increase this percentage to three percent (3%) of Gross Sales. Advertising fees must be paid in the above-described amounts for each Business Location.

All advertising and promotional activities undertaken by Franchisee individually in accordance with the foregoing requirements must be acceptable to the Ad Group. The Franchisee must submit all advertising and promotional materials for Ad Group approval prior to publication, and Franchisee is prohibited from publishing or utilizing any advertising or promotional materials not approved by the Ad Group. Further, Franchisee may not alter approved advertisements and promotional materials except to fill in local identification information. The Ad Group retains all ownership rights and title to all advertising and promotional materials.

**10.2 National Advertising Fund.** Franchisee acknowledges that, in addition to the undertakings described in Section 10.1 above, the Ad Group may establish a National Advertising Fund for the purpose of purchasing electronic and print media advertising for national distribution. Franchisee will be required to make additional contributions to the Ad Group for national advertising in amounts established by the Company.

## ARTICLE XI

### **RELATIONSHIP OF PARTIES/INDEMNIFICATION**

**11.1 Relationship of the Parties.** This Agreement does not create a fiduciary relationship between the parties. The Franchisee understands and agrees that, under this Agreement, the Franchisee is and shall be an independent contractor. Nothing in this Agreement is intended to make either party a general or special agent, joint venturer, partner or employee of the other for any purpose.

THE FRANCHISEE SHALL CONSPICUOUSLY IDENTIFY ITSELF AND THE BUSINESS, AND IN ALL DEALING WITH CUSTOMERS, SUPPLIERS, PUBLIC OFFICIALS, AND OTHERS, AS AN INDEPENDENT FRANCHISEE OF THE COMPANY, AND SHALL PLACE SUCH NOTICE OF INDEPENDENT OWNERSHIP ON ALL FORMS, BUSINESS CARDS, STATIONERY, ADVERTISING, SIGNS AND OTHER MATERIALS AND IN SUCH FASHION AS THE COMPANY, IN ITS SOLE DISCRETION, SPECIFIES AND REQUIRES FROM TIME TO TIME, IN ITS MANUAL (AS THE SAME MAY BE AMENDED FROM TIME TO TIME), OR OTHERWISE.

**11.2 No Liability for Acts of the Other.** Except as otherwise expressly authorized by this Agreement, neither party hereto will make any express or implied agreements,

warranties, guarantees or representations or incur any debt in the name of or on behalf of the other party, or represent that the relationship between the Company and the Franchisee is other than that of franchisor and franchisee. The Company does not assume any liability, and will not be deemed liable for any agreements, representations, or warranties made by the Franchisee, nor will the Company be obligated for any damages to any person or property that directly or indirectly arise from or relate to the operation of the Business. The Company shall not have the power to hire or fire the Franchisee's employees and, except as herein expressly provided, the Company may not control or have access to the Franchisee's funds or the expenditure thereof, or in any other way exercise dominion or control over the Business. The Company shall not be obligated for any damages to any person or party, directly or indirectly, arising out of the operation of the Business whether caused by the Franchisee's negligent or willful action or failure to act. It is expressly understood and agreed that neither the Franchisee nor any employee of the Franchisee whose compensation for services is paid by the Franchisee may, in any way, directly or indirectly, expressly or by implication, be construed to be an employee of the Company for any purpose, most particularly with respect to any mandated or other insurance coverage, tax or contributions, or requirements pertaining to withholdings, levied or fixed by any city, state or federal governmental agency. The Company shall have no liability for any sales, use, occupation, excise, gross receipts, income, property or other taxes, whether levied upon the Franchisee, the Business, or the Franchisee's property, or upon the Company, in connection with sales made or business conducted by the Franchisee or payments to the Company pursuant hereto.

### **11.3 Indemnification.**

**A.** Franchisee shall indemnify and hold harmless the Company, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents and employees, from and against any and all losses, expenses, judgments, claims, reasonable attorneys' fees, and damages arising out of or in connection with any claim arising directly or indirectly from, as a result of, or in connection with Franchisee's operation of the Business. Franchisee shall promptly notify the Company of any suits filed by or against Franchisee in connection with the operation of the Business and, upon request, shall furnish the Company with copies of such documents from the suit as the Company may request.

**B.** The Company shall indemnify and hold the Franchisee harmless from and against any and all claims, and the cost of defending such claims, caused by the gross negligence or willful misconduct of the Company or arising from any mandatory specification, standard or procedure contained in the Manual that is determined to be unlawful, provided that the Franchisee shall have given the Company timely notice of such claim or proceeding and has otherwise complied with this Agreement and, provided further, that the Company shall have the right to participate in and, to the extent the Company deems necessary, to control any such litigation or proceeding.

## ARTICLE XII

### INSURANCE

**12.1 Required Insurance.** To standardize insurance and to afford the Franchisee, the Company and the Franchisee's customers protection against insurable risks, the Company imposes and prescribes minimum standards and limits for certain types of insurance coverage required to be purchased by the Franchisee.

**A.** The Franchisee shall purchase at its sole expense and maintain in effect at all times during the Term the greater of the insurance coverage required by the landlord for the Business Location or the following categories of insurance coverage through licensed and admitted insurance companies acceptable to the Company:

- (1) Garage Liability insurance with \$1,000,000 limit per occurrence with products and completed operations coverage included. Coverage must also include \$1,000,000 for Hired Autos and Non-Owned Autos liability. Coverage must also include a Broadened Garage endorsement for Personal and Advertising liability. Franchisee shall insure the Company against all claims, suits, obligations, liabilities and damages, including attorneys' fees, based upon or arising out of the actual or alleged personal injuries or property damage resulting from or occurring in the course of, or on or about or otherwise relating to the business or the Business Location, provided that the required amounts herein may be modified from time to time by the Company to reflect inflation or further experience with claims;
- (2) State Required Worker's Compensation and Employer's Liability Insurance for the employees of the Business;
- (3) Unemployment Insurance for the employees of the Business;
- (4) Truth-in-Lending Act Insurance not less than \$300,000;
- (5) All risks coverage insurance on the Business Location and all fixtures, equipment, supplies and other property used in the operation of the Business, for full repair and replacement value of the machinery, equipment, improvements and betterments, without any applicable co-insurance clause except that an appropriate deductible clause shall be permitted;

It is recommended but not required that the Franchisee purchase an Umbrella policy in the amount of \$1,000,000 over and above all liability coverage.

It is further recommended that the Franchisee carry vehicle Title Errors and Omissions Coverage, Federal Odometer Coverage, Equal Credit Opportunity Act and Deceptive Sales Practices Coverage in the amount of \$1,000,000.



**B.** The insurance coverage acquired and maintained by the Franchisee at its own expense, as set forth in subsection (A) of this Section 12.1 shall:

- (1) Name the Company and its designated affiliates as additional insureds;
- (2) Extend to and provide indemnity for all obligations assumed by the Franchisee hereunder and all other items for which the Franchisee is required to indemnify the Company under the provisions of this Agreement;
- (3) Be primary to and non-contributory with respect to any other insurance purchased by the Company;
- (4) Provide, by endorsement, that the Company is entitled to receive at least thirty (30) days prior written notice of any intent to reduce policy limits, restrict coverage, cancel or otherwise alter or amend said policy.

The Franchisee shall not reduce the policy limits, restrict coverage, cancel or otherwise alter or amend said insurance policies without the Company's written consent.

**12.2 The Company's Right to Purchase.** If the Franchisee fails to purchase insurance conforming to the standards and limits prescribed by the Company, the Company may (but is not required to) obtain, through agents and insurance companies of its choosing, such insurance as is necessary to meet such standards on behalf of the Franchisee. Payments for such insurance shall be borne by the Franchisee and the Franchisee expressly agrees to forthwith pay the required premiums or to reimburse the Company therefor. Nothing contained herein shall be construed or deemed to impose any duty or obligation upon the Company to obtain or maintain any specific forms, kinds or amounts of insurance for or on behalf of the Franchisee.

**12.3 Disclaimer.** Nothing contained herein shall be construed or considered an undertaking or representation by the Company that such insurance and bondings as may be required to be obtained by the Franchisee, or by the Company for the Franchisee, will insure the Franchisee against any or all insurable risks of loss which may or can arise out of or in connection with the operation of the Business.

**12.4 Proof of Insurance.** The Franchisee shall promptly provide the Company with Certificates of Insurance evidencing such coverage no later than ten (10) days prior to the opening date of the Business. The Franchisee shall deliver a complete copy of the Franchisee's insurance in force within thirty (30) days following the delivery of the Certificates of Insurance. All insurance policies and documents shall be renewed, and upon such renewal, a renewal Certificate of Insurance shall be furnished to the Company prior to the expiration date of the existing term(s) of such policy(ies).

**12.5 Notice of Claims.** The Franchisee shall notify the Company of any and all claims or demands against the Franchisee, the Business, the Business Location, and/or the Company immediately on becoming aware of any such claim or demand. The Franchisee agrees

to respond to all claims within the time required by law, rule or regulation. The Franchisee shall cooperate with the Company (or its designee) to defend the Company and the Franchisee against any and all claims made by employees, customers or third parties. The Franchisee shall, when necessary, make appearances at administrative or other hearings to present or reinforce such defenses.

**12.6 Failure to Insure - Right to Terminate.** Failure by the Franchisee to purchase or maintain any insurance required by this Agreement, or failure to reimburse the Company for its purchase of such insurance on behalf of the Franchisee, shall constitute a material and incurable breach of this Agreement which, unless waived by the Company, shall entitle the Company to terminate this Agreement unilaterally and immediately upon notice to the Franchisee, and this Agreement shall thereafter be null, void and of no effect (except for those post-termination and post-expiration provisions which by their nature shall survive).

**12.7 Minimum Coverages.** The minimum limits of insurance coverage required to be procured by the Franchisee may be modified from time to time by the Company, in its sole discretion, by written notice transmitted by the Company to the Franchisee. Upon delivery (or attempted delivery) of such written notice, the Franchisee shall be obligated to immediately purchase insurance conforming to the newly established standards and limits prescribed by the Company. The Company may periodically increase the amounts of coverage required under these insurance policies and/or require different or additional insurance coverages (including reasonable excess liability insurance) at any time to reflect inflation, identification of new risks, changes in law or standards of liability, higher damage awards or other relevant changes in circumstances. Franchisee must routinely furnish the Company copies of its Certificate of Insurance or other evidence of maintaining this insurance coverage and paying premiums.

## ARTICLE XIII

### **REPORTS, FINANCIAL STATEMENTS, AND AUDIT RIGHTS**

**13.1 Books and Records.** The Franchisee shall establish and maintain at the Franchisee's expense a bookkeeping, accounting and record keeping system conforming to the requirements prescribed by the Company from time to time. Franchisee shall utilize the accounting functions of the J.D. BYRIDER Computer Software and install and maintain the hardware necessary to allow electronic communication between the Franchisee's computer system and the Company's computer system. Franchisee is prohibited from utilizing the bookkeeping and record system for any other business. With respect to the operation and financial condition of the Business, the Franchisee shall sign, verify and furnish the following reports, financial statements, and returns, to the Company in the form prescribed by the Company:

A. Within one hundred twenty (120) days after the end of the Franchisee's fiscal year, complete financial statements for such fiscal year. If Franchisee uses a third party accounting firm to review or audit, then those reports prepared by the third party must be furnished. If no third party is engaged, then the statements prepared internally must be furnished.

Such annual statements shall be prepared in accordance with generally accepted principles applied on a consistent basis. The Company reserves the right to require that such financial statements be audited by independent Certified Public Accountants at the Franchisee's expense.

**B.** Within thirty (30) days after receipt by the Franchisee, exact copies of all audits and reports from state and local regulatory agencies; and within thirty (30) days of the filing, exact copies of those portions of Franchisee's federal and state income tax returns that reflect the operations of the Business.

**13.2 Computer Records.** The Franchisee shall keep true, complete and accurate records of each transaction of any activity affecting the Business including, without limitation, Gross Sales, purchases, sales and other related data as required from time to time by the Company. The Franchisee shall utilize programmable electronic equipment and other computer hardware and the Company's computer system which is included as an integral part of the System for such activities as may be required by the Company. The Franchisee shall utilize the Company's computer system and systems, as described in the Software Agreement, as are fully compatible with the Company's business systems without the necessity of any alteration by the Company. The Franchisee shall maintain such systems as shall be required by the Company and the Company shall have full access at all times to all of the Franchisee's computer data and programmable electronic equipment and related information and to the Franchisee's computer systems by means of direct access whether in person or by telephone/modem. The Company shall not be obligated to provide Franchisee with access to the Company's computer system or provide services therefor at any time after the termination of the Agreement or after the Franchisee shall give the Company notice of termination.

**13.3 Audit of Books and Records.** All records shall be kept for a period of at least three (3) years following the end of each calendar year. The Company may, from time to time, cause one or more complete audits to be made of the affairs and records relating to the operations of the Business. Upon request by the Company, the Franchisee shall make such books, records and information available to the Company or its designated representative at all reasonable times for review and audit by the Company at the Business Location. In the event that an audit by the Company was triggered because of Franchisee's failure to provide the reports required under this Agreement, results in a determination that the Royalty Fee and/or Advertising Fees paid to the Company are deficient (underpaid) by more than two (2%) percent, or the Company concludes that the deficient payment was intentional or grossly negligent by the Franchisee, the Franchisee shall promptly pay to the Company an amount equal to three (3) times the Royalty Fee and/or Advertising Fee shown to be due and all costs and expenses incurred by the Company in conducting such audit, including salaries of the Company's representatives, travel costs, room and board and audit fees. Nothing contained herein shall constitute an agreement by the Company to accept any payments after the same are due or a commitment by the Company to extend credit to or otherwise finance the Franchisee's operation of the Business.

## ARTICLE XIV

### **TRANSFER OF FRANCHISE**

**14.1 Assignment by the Company.** The Franchisee acknowledges that the Company maintains a staff to manage and operate the System and that staff members can change as employees come and go. The Franchisee further acknowledges that it did not sign this Agreement in reliance on the continued participation by or employment of any of the Company's shareholders, directors, officers, or employees. The Company shall have the right to change its ownership or form and/or assign or transfer this Agreement, all of its rights, obligations and privileges under this Agreement, and any other agreement to a third party without restriction. After the Company's assignment of this Agreement to a third party who expressly assumes the obligations under this Agreement, the Company will no longer have any performance or other obligations under this Agreement. This Agreement and any other agreement will inure to the benefit of any transferee or other legal successor to the Company's interest in it.

**14.2 Assignment by Franchisee to a Wholly-Owned Corporation or Limited Liability Company or Other Business Entity.** Notwithstanding anything contained herein to the contrary, including, without limitation, Section 14.3 below, subject to the Company's prior written consent, if the Franchisee is a natural person and is in full compliance with this Agreement, he may assign and transfer the rights hereunder to a corporation, limited liability company, or other similar business entity (hereinafter, the "Entity") in which the Franchisee (a) is the owner of the controlling ownership interests of the Entity and (b) is the principal executive officer of the Entity, as long as: (i) the Entity owns all of the assets of the Business; (ii) the Entity's activities are confined exclusively to operating the Business; and (iii) the other owners of the Entity's ownership interests would not be in violation of the covenants not to compete set forth in Section 18.1. The Entity must, in a writing satisfactory to the Company, assume all the Franchisee's obligations under this Agreement. Each ownership interest certificate of the Entity shall have conspicuously endorsed upon it a statement that it is held subject to, and that further assignment or transfer thereof is subject to, all restrictions imposed upon assignments by this Agreement. No new ownership interests in the Entity shall be issued to any person, trust, foundation, limited liability company, corporation or other business entity without obtaining the Company's prior written consent and then only upon disclosure of the terms and conditions contained herein being made to the prospective new holders of the ownership interest. Franchisee agrees to remain personally liable under this Agreement as if the assignment or transfer did not occur.

### **14.3 Assignment by Franchisee to Third Party.**

**A.** The Franchisee understands and acknowledges that the rights and duties this Agreement creates are personal to the Franchisee and its owners and that the Company has granted the Franchisee the franchise in reliance upon its perceptions of the Franchisee's and its owners' individual or collective character, skill, aptitude, attitude, business ability, and financial capacity. Accordingly, none of the following may be transferred without the Company's prior written approval: (i) this Agreement (or any interest in this Agreement); (ii) the Business (or any right to receive all or a portion of the Business' profits or losses or capital appreciation related to

the Business); (iii) the right to occupy the Business Location; (iv) substantially all of the assets of the Business; (v) any ownership interest in the Franchisee (if the Franchisee is a legal entity); or (vi) any ownership interest in any of the Franchisee's owners (if such owners are legal entities). A transfer of the Business' ownership, possession, control, or substantially all of its assets, may be made only with a transfer of this Agreement. Any transfer without the Company's approval is a breach of this Agreement and has no effect.

**B.** In this Agreement, the term "transfer" includes a voluntary, involuntary, direct, or indirect assignment, sale, gift, or other disposition. An assignment, sale, gift, or other disposition includes the following events:

(1) merger or consolidation or issuance of additional securities or other forms of ownership interest;

(2) any sale of a security convertible to an ownership interest;

(3) transfer of an interest in the Franchisee or the Franchisee's owners, this Agreement, the Business or substantially all of its assets, or the right to occupy the Business Location in a divorce, insolvency, or entity dissolution proceeding or otherwise by operation of law;

(4) if the Franchisee, one of the Franchisee's owners or an owner of one of the Franchisee's owners dies (if natural persons), a transfer of an interest in the Franchisee, this Agreement, the Business or substantially all of its assets, the right to occupy the Business Location or the Franchisee's owner by will, declaration of or transfer in trust, or under the laws of intestate succession; or

(5) pledge of this Agreement (to someone other than the Company) or an ownership interest in the Franchisor or its owners as security, foreclosure upon the Business, or the Franchisee's transfer, surrender, or loss of the Business' possession, control, or management.

**C.** If the Franchisee and its owners are in full compliance with this Agreement, then, subject to the provisions of this Section 14, the Company will approve a transfer that meets all of the requirements of this Section 14.3.C. A non-controlling (less than 50%) ownership interest in the Franchisee (or its owners), as determined as of the date on which the proposed transfer will occur, may be transferred if the proposed transferee and its direct and indirect owners (if the transferee is a legal entity) are of good character and meet the Company's then applicable standards for franchisees. All proposed transferees must fill out and submit to the Company its then current form of franchise application. If the proposed transfer is of this Agreement or a controlling ownership interest in the Franchisee or one of its owners, or is one of a series of transfers (regardless of time period over which these transfers take place) which in the aggregate transfer this Agreement or a controlling ownership interest in the Franchisee (or one of its owners) (each, an "Assignment"), then all of the following conditions must be met before or concurrently with the effective date of the transfer:

(1) The purchaser, transferee, lessee or assignee (the "Assignee") (or the principal officers, shareholders, members, or directors of the Assignee in the case where the Assignee is a legal entity) has the aptitude, skills, qualifications, credit and financial resources necessary, in the Company's judgment, to conduct the Business and to fulfill the Assignee's obligations to the Company;

(2) As of the date of any such Assignment, the Franchisee shall have fully complied with all its obligations hereunder or under any other agreement with the Company, including, without limitation, (i) paying all monetary obligations owed to the Company, its affiliates, and any third party vendors, (ii) submitting all required reports and statements, and (iii) complying with all provisions of this Agreement or any other agreement with the Company or its affiliates during both the sixty (60) day period before the Franchisee requested the Company's consent and the period between the Franchisee's request for consent and the effective date of the Assignment;

(3) Neither the Assignee nor its owners (if the Assignee is a legal entity) or affiliates have an ownership interest (direct or indirect) in or perform services for a Competitive Business (defined in Section 18.1);

(4) The Business Location's landlord, if any, allows the Franchisee to transfer the Business Location's lease to Assignee, Assignee assumes all of the obligations of the Franchisee under the lease for the Business Location and the Franchisee is not in default with respect to any of its obligations under said lease;

(5) The Assignee executes the Company's then-current form of Franchise Agreement and related documents, any and all of the provisions of which may differ materially from any and all of those contained in this Agreement; provided that the Assignee shall not be obligated to pay an Initial Franchise Fee; provided further that the term of the new Franchise Agreement shall expire on the date provided in such new Franchise Agreement;

(6) The Franchisee executes and delivers to the Company a general release of all claims against the Company, its shareholders, officers, directors, employees, and agents;

(7) The Assignee, or a manager designated by the Assignee, shall have satisfactorily completed the Initial Training Program then required of all new franchisees of the Company, and paid the then-current training fee being charged by the Company in connection with all such transfers;

(8) All individuals and entities who will be direct or indirect owners must execute or have executed a guaranty in a form the Company prescribes;

(9) The Company has determined that the purchase price and payment terms will not adversely affect the Assignee's operation of the Business;

(10) If the Franchisee or any of its owners finance any part of the purchase price, the Franchisee and/or its owners agree that all of the Assignee's obligations under

promissory notes, agreements or security interests reserved in the Business are subordinate to the Assignee's obligations to pay any amounts due to the Company, its affiliates, and third-party vendors and otherwise to comply with this Agreement;

(11) (a) Franchisee has corrected any existing deficiencies of the Business Location of which the Company has notified Franchisee on a punch list or in other communications, and/or (b) the Assignee agrees (if the Assignment is of this Agreement) to upgrade, remodel, and refurbish the Business Location in accordance with the Company's then-current requirements and specifications for Businesses within the time period the Company specifies following the effective date of the Assignment; provided the Company will advise the Assignee before the effective date of the Assignment of the specific actions that it must take and the time period within which such actions must be taken;

(12) The Franchisee shall provide the Company with such information as the Company shall require to make such evaluations of the proposed Assignee as it shall deem necessary to satisfy its requirements;

(13) The Franchisee has first offered to sell, transfer, lease or assign this Agreement and the Business to the Company in accordance with Article XV;

(14) The Franchisee and its transferring owners will not directly or indirectly at any time or in any manner (except with respect to other Businesses the Franchisee owns and operates) identify itself or themselves or any business as a current or former Business or as one of the Company's franchise owners; use any Mark, any colorable imitation of a Mark, or other indicia of a Business in any manner or for any purpose; utilize for any purpose any trade name, trade or service mark, or other commercial symbol that suggests or indicates a connection or association with the Company;

(15) Any advertisement for the sale of the Franchisee's rights hereunder shall make clear that the Franchisee and not the Company is the offerer;

(16) The Franchisee shall pay the Transfer Fee to the Company; and

(17) The Franchisee and its transferring owners comply with the non-compete obligations under Section 18.1.

The Franchisee acknowledges and agrees that the Company may review all information regarding the Business that the Franchisee gives the Assignee, correct any information that the Company believes to be inaccurate, and give the Assignee copies of any reports that the Franchisee has given the Company or the Company has made regarding the Business.

#### **14.4 Death or Incapacity of the Franchisee.**

**A.** In the event of the death or incapacity of the Franchisee (if it is a natural person) or the death or incapacity of Franchisee's principal owner (if Franchisee is a legal entity), the Franchisee's or such principal owner's heirs, personal representatives, executors, guardians, administrators or conservators, as applicable, shall, within one hundred eighty (180) days

following such death or incapacity, complete the transfer of the Franchisee's interest in this Agreement, the Business and Business Location or, as applicable, of the principal owner's interest in Franchisee, to a person or entity approved by the Company. The person to whom such interests are proposed to be transferred must meet the Company's standards for new franchisees, agree to execute the then-current form of Franchise Agreement, and, within thirty (30) days after the death or legal incapacity of the Franchisee (or the death or legal incapacity of the principal owner of the Franchisee if the Franchisee is a legal entity), shall have satisfactorily completed the Company's then current Initial Training Program. If at the time of such death or legal incapacity the Franchisee has employed a manager who has satisfactorily completed such training program, such manager shall be deemed to have satisfied such training requirements. The term "**incapacity**" means a mental or physical disability, impairment, or condition that is reasonably expected to prevent or actually does prevent the Franchisee or its principal owner from supervising the management and operation of the Business.

**14.5 Effect of Consent to Transfer.** The Company's consent to an Assignment of this Agreement, the Business, the right to occupy the Business Location, or any interest in Franchisee or its owners, is not a representation of the fairness of the terms of any contract between the Franchisee and the Assignee, a guarantee of the Business' or Assignee's prospects of success, or a waiver of any claims the Company has against the Franchisee (or its owners) or of the Company's right to demand the Assignee's full compliance with this Agreement.

**14.6 No Encumbrance.** Neither Franchisee nor its owners shall have the right to pledge, encumber, hypothecate, or otherwise give any third party a security interest in (i) the ownership interests of Franchisee or its owners, as applicable, or (ii) this Agreement, in any manner whatsoever, unless (a) the Company provides its prior written consent, which consent may be withheld for any reason whatsoever in the Company's sole judgment and (b) the secured party agrees that its claims will be subordinate to all amounts the Franchisee owes at any time to the Company or its affiliates.

## ARTICLE XV

### **RIGHT OF FIRST REFUSAL**

**15.1 Procedure Regarding Right of First Refusal and Assignment.** Prior to making any Assignment as provided in Section 14.3 of Article XIV, the Franchisee shall deliver to the Company written notice (the "Assignment Notice"), setting forth all the terms and conditions of the proposed Assignment and all available information concerning the proposed Assignee.

**15.2 Right of First Refusal.** Within thirty (30) days after the Company's receipt of the Assignment Notice or if it shall reasonably request additional information, within thirty (30) days after receipt of such additional information (the "Review Period"), the Company shall have the right, by written notice to the Franchisee, to cause the Assignment to be made to itself or to its nominee upon the terms and conditions specified in the Assignment Notice except that the Company shall be allowed to pay the equivalent cash value of any consideration



specified in the notice, and Franchisee will be required to grant the customary warranties and representations to the Company. The failure of the Company to deliver such notice within the Review Period shall constitute a waiver of its Right of First Refusal.

**15.3 Company Objections/Conditions to Assignment.** If the Company does not exercise its said Right of First Refusal it shall have the right, but not the obligation, to deliver to the Franchisee, no later than the expiration of the Review Period, written notice of any objection it has, or any conditions it will impose upon, the proposed Assignment. The failure of the Company to deliver such notice within the Review Period shall constitute a consent to the proposed Assignment but without waiver of any other rights the Company has under this Agreement.

**15.4 Change in Terms/Conditions of Assignment.** If the Company does not exercise its Right of First Refusal, and does not object to the Assignment, the Franchisee shall have the right, for a period of thirty (30) days after the expiration of the Review Period, to effect the Assignment to the proposed Assignee upon the terms and conditions specified in the Assignment Notice subject to such conditions as the Company may have reasonably imposed thereon. If the terms of the Assignment are materially changed thereafter, such changed terms shall be deemed a new offer and the Company shall again have such Right of First Refusal with respect to them.

**15.5 Failure of Assignment - New Right of First Refusal.** If the Franchisee fails to effect the Assignment within thirty (30) days after the expiration of the Review Period, then the proposed Assignment shall be deemed a new proposal for Assignment with respect to which the Company shall have the Right of First Refusal.

## ARTICLE XVI

### **DEFAULT & TERMINATION.**

#### **16.1 The Company's Right to Terminate Prior to Opening.**

A. The Company shall have the right to terminate this Agreement forthwith if:

(1) Prior to the Business opening, the Franchisee shall have failed to satisfactorily complete the Initial Training Program as required herein. The Franchisee acknowledges that because of the Company's skill and knowledge with respect to the training and skill required to manage the Business, its decision whether or not the Franchisee has satisfactorily completed such training may be made by the Company in the good faith exercise of its sole, subjective judgment;

(2) The Business is not opened to the public for business within one (1) year of the execution of this Agreement;

(3) Any financial, personal or other information provided by the Franchisee to the Company in connection with the Franchisee's application for the franchise is materially false, misleading, incomplete or inaccurate.

B. If the Company elects to terminate this Agreement pursuant to this Section, the Company shall notify the Franchisee of its election. If, at the time of such termination, the Franchisee has entered into a binding lease or purchase agreement for the Business Location or has entered into binding purchase orders for the purchase of equipment or fixtures to be installed in the Business Location, the Company shall have the right but not the obligation to require the Franchisee to use its best efforts to assign its rights under the lease, purchase agreements and purchase orders to the Company or its designee. If the Company elects, and such assignments are made, the Company or its designee shall assume all of Franchisee's obligation under such lease, purchase agreements and purchase orders. If the Company exercises its right to terminate pursuant to this Article, this Agreement shall be null, void and of no effect, and neither party shall have any further right or obligation to the other except those obligations which, by their nature, survive such termination.

#### **16.2 The Company's Right to Terminate After Opening.**

A. **Grounds for Termination Without Cure Period.** The Company shall have the right to terminate this Agreement immediately if:

(1) The Franchisee (or any of its owners) have made or make any material misrepresentation or omission in acquiring or operating the Business;

(2) The Company has sent a notice of termination under the Software Agreement due to Franchisee's breach of its provisions or under any other franchise agreement for a Business between the Franchisee (or any of its owners or affiliates) and the Company;

(3) The Franchisee (or any of its owners) makes or attempts to make any transfer in violation of Article 14;

(4) The Franchisee makes an assignment for the benefit of creditors or admits in writing its insolvency or inability to pay its debts generally as they become due; the Franchisee consents to the appointment of a receiver, trustee, or liquidator of all or a substantial part of its property; the Business is attached, seized, subjected to a writ or distress warrant, or levied upon, unless the attachment, seizure, writ, warrant, or levy is vacated within thirty (30) days; or any order appointing a receiver, trustee, or liquidator of the Franchisee or the Business is not vacated within thirty (30) days following the order's entry;

(5) The Business or the Business Location is seized, taken over or foreclosed by a government official in the exercise of its duties, or seized, taken over or foreclosed by a creditor, lienholder or lessor, provided that a final judgment against the Franchisee remains unsatisfied for thirty (30) days (unless a supersedeas or other appeal bond has been filed); or a levy of execution has been made upon the licenses granted hereunder or upon any property used in the Business, and is not discharged within five (5) days of such levy; or

(6) The Franchisee or any of its managers, directors, officers or majority stockholder are convicted of, or plead guilty or no contest to, a felony or other criminal misconduct which is directly related to the operation of the Business.

**B. Termination After Opportunity to Cure.**

(1) The Company shall have the right to terminate this Agreement immediately if the Franchisee fails to pay the Company, the Ad Group (or their affiliates) any amounts due and does not cure the failure within ten (10) days after written notice of the failure to the Franchisee.

(2) The Company shall have the right to terminate this Agreement immediately if the Franchisee fails to comply with this Agreement in any of the following manners and does not cure the failure within thirty (30) days after written notice of the failure to the Franchisee:

a) The Franchisee voluntarily or otherwise abandons the Business by failing to operate it for a period of three (3) consecutive business days or more during the Term, unless the Business has been closed for a purpose approved by the Company;

b) The Franchisee fails to purchase or maintain the insurance required by this Agreement or fails to reimburse the Company for purchasing of such insurance on the Franchisee's behalf;

c) The Franchisee interferes with the Company's right to inspect the Business or observe its operation, as provided in **Section 6.10** of this Agreement;

d) The Franchisee (or any of its owners) makes any unauthorized use or disclosure of any part of the Manual or any other Confidential Information;

e) The Franchisee's or Franchisee's owner's assets, property, or interests are blocked under any law, ordinance, or regulation relating to terrorist activities, or the Franchisee or any of the Franchisee's owners otherwise violate any such law, ordinance, or regulation;

f) The Franchisee fails to comply with any federal, state or local law, ordinance, or regulation;

g) The Franchisee fails to pay when due any federal or state income, service, sales, or other taxes due on the Business' operation, unless the Franchisee is in good faith contesting its liability for these taxes;

h) The Franchisee (or its owner) fail to assign this Agreement in accordance with the terms of this Agreement in the event of the Franchisee's (or its owner's) death or disability; or

i) The loss by the Franchisee of the right to occupy the Business Location because of a breach of any material provision of the lease for the Business Location, or otherwise; or

j) The Franchisee fails to comply with any other provision of this Agreement.

**C. Effectiveness of Termination.** Except for termination pursuant to Section 16.2B(1) or pursuant to 16.2A(4), the termination of this Agreement pursuant to Section 16.2A or Section 16.2B shall be automatically effective sixty (60) days after delivery of the notice of termination, provided that a termination for financial default pursuant to Section 16.2B(1) or pursuant to 16.2A(4) shall be effective ten (10) days after delivery of the notice of termination. The Franchisee acknowledges and agrees that, upon delivery of the notice of termination, Franchisee shall have no opportunity to cure the default based upon which the Company terminated this Agreement. The Franchisee further acknowledges and agrees that the sixty (60) day (or ten (10) day period if terminated pursuant to Section 16.2B(1) or pursuant to 16.2A(4)) (referred to herein as the “Wind Down Period”) shall be used by Franchisee for the sole purpose of winding down the Business and, during such period, the Franchisee must continue to operate the Business pursuant to the terms of this Agreement. In the event the Franchisee engages in any conduct during this period which, in the opinion of the Company, impairs the goodwill and reputation of the Franchisor, the Marks and/or the System, the Company has the right to eliminate any or all of the wind down period and effectuate the termination immediately upon written notice to Franchisee.

Notwithstanding anything contained in Section 17.1 to the contrary, the Franchisee acknowledges and agrees that it shall use the Wind Down Period to perform its obligations under Section 17.1 and that within ten (10) days of the effectiveness of the termination, the Franchisee shall provide the Company with evidence that the Franchisee has complied with all of those obligations.

### **16.3 Franchisee's Rights to Terminate.**

**A. Grounds.** If the Franchisee is in full compliance with this Agreement and the Company breaches any material provision, term or condition, Franchisee may terminate this Agreement as provided herein.

**B. Procedure.** The Franchisee shall not have any right to terminate this Agreement or commence an action against the Company for injunctive relief, violation of any state, federal or common law, unless and until:

(1) Written notice setting forth the alleged breach in detail has been delivered to the Company by the Franchisee; and

(2) The Company fails to correct, or diligently make all reasonable efforts to correct, the alleged breach within thirty (30) days after receipt of such written notice.

C. **Required Notice-Waiver of Breach.** If the Franchisee fails to give the Company written notice of an alleged breach of this Agreement within one (1) year from the date that the Franchisee has knowledge of the facts which constitute a breach by the Company, then the alleged breach shall be deemed to be condoned, approved and waived by the Franchisee and the alleged breach or violation shall not be deemed to be a breach or violation of this Agreement.

## ARTICLE XVII

### **OBLIGATIONS UPON TERMINATION**

**17.1 Obligations.** In the event of the termination or expiration of this Agreement, whether by reason of default, lapse of time or other cause, the Franchisee shall: (A) promptly pay all amounts owed to the Company; (B) promptly return to the Company the Manual and other confidential materials including, without limitation, all computer equipment, including the J.D. BYRIDER Computer Software; (C) maintain confidentiality of all proprietary and Confidential Information furnished by the Company; (D) immediately cease using any of the Marks; (E) immediately make all alterations to the building facilities and exterior signs at the Business Location to distinguish them from the appearance and identity of a Business; if the Franchisee shall fail or refuse to make or cause such changes to be made, the Company, without prejudice to its other rights and remedies, may enter upon the Business Location, forcibly if necessary, without being guilty of trespass or any other tort, and make such changes at the Franchisee's expense; (F) cancel all telephone listings, numbers and directory advertising, and, if required by the Company, direct the transfer of the same to the Company or on its order; (G) take such actions as may be necessary or desirable to assign to the Company or the Company's designee any assumed name, rights or equivalent registration filed with state, city or county authorities which contain the Marks within thirty (30) days after the termination or expiration of this Agreement; (H) comply with all covenants contained in Article XVIII herein; (I) pay all costs, including attorneys' fees, incurred by the Company in terminating this Agreement.

Further, if the Franchisee is the titleholder of the Business Location, the Company shall have the right, but not the obligation, to enter into a lease for the Business Location at a fair market value rental, and for a term running concurrently with the term of this Agreement plus the term of the Successor Franchise Agreement as if this Agreement and Successor Franchise Agreement were to run their full terms.

**17.2 Termination of Access to J.D. BYRIDER Computer Software.** Upon termination or expiration of this Agreement, the Software Agreement shall also concurrently expire or terminate. Upon the giving of notice of termination by the Franchisee, the Company shall not be obligated to provide the Franchisee with access to the J.D. BYRIDER Computer Software or provide any services with respect thereto.

**17.3 Survival of Obligations.** The expiration or termination of this Agreement shall be without prejudice to any of the rights and remedies of the Company with respect to the foregoing obligations, competitive covenants and other like matters that reasonably would survive the end of this Agreement.

## ARTICLE XVIII

### COVENANTS NOT TO COMPETE

#### **18.1 In-Term Covenant Not To Compete.**

Franchisee and its owners agree that, during this Agreement's term, neither Franchisee, nor any owner, nor any member of Franchisee's or an owner's immediate family will:

- (a) have any direct or indirect, controlling or non-controlling interest as an owner (whether of record, beneficial or otherwise) in, or as a landlord of, a Competitive Business (defined below), wherever located or operating;
- (b) perform services as a director, officer, manager, employee, consultant, representative or agent, or in any other capacity, for a Competitive Business, wherever located or operating;
- (c) recruit or hire any employee of Company, Company's affiliates or Company's franchisees without obtaining prior written permission from such employer; or
- (d) divert or attempt to divert any actual or potential business or customer of the Business to a Competitive Business.

The term "Competitive Business" means any business which: (i) offers or sells used automobiles, while retaining the retail installment contract, or (ii) operates itself as a provider of buy here pay here financing whereby the selling dealer who originates retail installment contracts and the assignee of the retail installment contracts have some common equity ownership; or (iii) grants franchises or licenses to operate a business covered by the terms of (i) and (ii) of this subsection.

**18.2 After Termination.** Franchisee agrees that for a period of twenty-four (24) months following the expiration or termination of this Franchise Agreement or any Successor Franchise Agreement, neither it nor any of its owners (or their immediate family members) will (i) engage, participate or assist in any way in the operation of or (ii) have any direct or indirect interest (whether as an owner, investor, partner, director, officer, employee, consultant, representative, agent or otherwise) in, any Competitive Business (as defined in Section 18.1) that is located within a ten (10) mile radius of the Business.

**18.3 Covenants by Franchisee's Personnel.** The Company shall have the right to require all of the Franchisee's Managers and other personnel performing managerial or supervisory functions and all personnel receiving special training from the Company to execute confidentiality covenants in a form satisfactory to the Company.

**18.4 Enforcement of Covenants Not To Compete.** The Franchisee acknowledges that violation of the covenants not to compete contained in this Agreement would result in immediate and irreparable injury to the Company for which no adequate remedy at law

will be available. Accordingly, the Franchisee hereby acknowledges the Company's right to seek an injunction and agrees not to contest any application by the Company for such injunction to prohibit any conduct by the Franchisee in violation of the terms of those covenants not to compete set forth in this Agreement. The Franchisee expressly agrees that it may be conclusively presumed that a violation of the terms of said covenants not to compete was accomplished by and through the Franchisee's unlawful utilization of the Company's Confidential Information, know-how, methods and procedures. Further, the Franchisee expressly agrees that the existence of any claims it may have against the Company, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by the Company for the covenants not to compete set forth in this Agreement. The Franchisee further agrees to pay all costs and expenses, including reasonable attorneys' and experts' fees, incurred by the Company in connection with the enforcement of the covenants not to compete set forth in this Agreement.

**18.5 Penalty.** Because Company and its franchisees have made substantial investments in employee training and development, Franchisee acknowledges and agrees that hiring an employee of Company or another franchisee would be disruptive and costly to such parties. Accordingly, if Franchisee hires an employee of Company, its affiliates or another franchisee, or a former employee of Company, its affiliates or another franchisee within one year after termination of employment with such employer, Franchisee agrees to pay to the former employer an amount equal to three times the annual income (salary plus bonus) of such employee during his/her most recent term of employment with Company or such other franchisee.

## **ARTICLE XIX**

### **ARBITRATION**

#### **19.1 Arbitration.**

The parties agree that all controversies, disputes, or claims between Company and its affiliates, and our and their respective shareholders, officers, directors, agents, and/or employees, and Franchisee (and/or your owners, guarantors, affiliates, and/or employees) arising out of or related to:

- (1) this Agreement or any other agreement between the parties;
- (2) Company's relationship with Franchisee;
- (3) the validity of this Agreement or any other agreement between the parties or any provision of any such agreements (including validity and scope of the arbitration obligations under this Section, which the parties acknowledge are to be determined by an arbitrator, not a court); or
- (4) any System requirement;

must be submitted for binding arbitration, on demand of either party, to Judicial Arbitration and Mediation Service ("JAMS") or its successor (or an organization designated by JAMS or its successor). All questions of arbitrability shall be determined by the arbitrator. The arbitration

proceedings will be conducted by one arbitrator and, except as this Subsection otherwise provides, according to the then current arbitration rules of JAMS. All proceedings will be conducted at a suitable location chosen by the arbitrator in the Indianapolis, Indiana metropolitan area. All matters relating to arbitration will be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.). Judgment upon the arbitrator's award may be entered in any court of competent jurisdiction.

The arbitrator has the right to award or include in his or her award any relief which he or she deems proper, including, without limitation, money damages (with interest on unpaid amounts from the date due), specific performance, injunctive relief, and attorneys' fees and costs, provided that the arbitrator may not declare any mark generic or otherwise invalid or, except as expressly provided in Section 20.8 below, award any punitive, exemplary or multiple damages against either party (each party hereby waiving to the fullest extent permitted by law, except as provided in Section 20.8 below, any right to or claim for any punitive or exemplary damages against the other).

Company and Franchisee agree to be bound by the provisions of any limitation on the period of time in which claims must be brought under applicable law or this Agreement, whichever expires earlier. Company and Franchisee further agree that, in any arbitration proceeding, each must submit or file any claim which would constitute a compulsory counterclaim (as defined by Rule 13 of the Federal Rules of Civil Procedure) within the same proceeding as the claim to which it relates. Any claim which is not submitted or filed as required is forever barred. The arbitrator may not consider any settlement discussions or offers that might have been made by either Company or Franchisee.

Company and Franchisee agree that arbitration will be conducted on an individual, not a class-wide, basis and that an arbitration proceeding between Company and its affiliates, and our and their respective shareholders, officers, directors, agents, and/or employees, and Franchisee (and/or your owners, guarantors, affiliates, and/or employees) may not be consolidated with any other arbitration proceeding between Company and any other person. Notwithstanding the foregoing or anything to the contrary in this Section or Section 20.1, if any court or arbitrator determines that all or any part of the preceding sentence is unenforceable with respect to a dispute that otherwise would be subject to arbitration under this Section 19.1, then all parties agree that this arbitration clause shall not apply to that dispute and that such dispute shall be resolved in a judicial proceeding in accordance with Section 20.6.

Despite this agreement to arbitrate, Company and Franchisee each have the right in a proper case to seek temporary restraining orders and temporary or preliminary injunctive relief from a court of competent jurisdiction; provided, however, that Company and Franchisee must contemporaneously submit the dispute for arbitration on the merits as provided in this Subsection.

The provisions of this Subsection are intended to benefit and bind certain third party non-signatories and will continue in full force and effect subsequent to and notwithstanding this Agreement's expiration or termination.



## ARTICLE XX

### MISCELLANEOUS

**20.1 Severability.** All provisions of this Agreement are severable and this Agreement shall be interpreted and enforced as if all completely invalid and unenforceable provisions were not contained herein and partially valid and enforceable provisions shall be enforced to the extent valid and enforceable. If any applicable and binding law or rule of any jurisdiction requires a greater prior notice of the termination or refusal to extend the Term or prior notice of the refusal to grant the right to obtain a Successor Franchise Agreement than is required herein or the taking of some other action not required hereunder or if under any applicable and binding law or rule of any jurisdiction, any provision of this Agreement or any specification, standard or operating procedure prescribed by the Company is invalid or unenforceable, the prior notice or other action required by such law or rule shall be substituted for the notice requirements hereof, or such invalid or unenforceable provision, specification, standard or operating procedure shall be modified to the extent required to be valid and enforceable. Such modifications to this Agreement shall be effective only in such jurisdictions and shall be enforced as originally made and entered into in all other jurisdictions.

**20.2 No Third Party Rights.** Anything to the contrary herein notwithstanding, nothing in this Agreement is intended, nor shall it be deemed to confer upon any person or legal entity other than the Company or the Franchisee and such of their respective successors and assigns as may be contemplated by this Agreement, any rights or remedies under or by reason of this Agreement, except as provided in Section 18.5 and Section 19.1.

**20.3 Captions.** All captions herein are intended solely for the convenience of the parties and none shall be deemed to affect the meaning or construction of any provision hereof.

**20.4 Counterparts.** This Agreement may be executed in one or more counterparts and each copy so executed shall be deemed an original but all copies together shall constitute one agreement.

**20.5 Governing Law.** This Agreement takes effect upon its acceptance and execution by the Company in Indiana and shall be interpreted and construed in accordance with Indiana law. Any dispute between the parties, except as stated in this Section 20.5, shall be governed by the laws of the State of Indiana which law shall prevail in any event of conflict of law, except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. 1051 et seq.), the United States Arbitration Act (9 U.S.C. 1 et seq.), or other federal law. The provisions of any law of Indiana regarding franchises (including, without limitation, registration, disclosure, or relationship, and the regulations promulgated thereunder) shall not apply unless such law's jurisdictional, definitional and other requirements are met independently of, and without reference to, this Section. The enforceability of the covenants set forth in Article 18 shall be determined in accordance with the law of the state in which the franchised business is located.

**20.6 Choice of Forum.** The Company and the Franchisee agree that any action brought by one of them against the other (which is not to be arbitrated pursuant hereto or pursuant to law) shall be instituted in a state or federal court having subject matter jurisdiction thereof located in Marion County, Indiana and they irrevocably waive any objection they may have to the jurisdiction or the venue of such court.

**20.7 Jury Trial Waiver.** The Company and the Franchisee irrevocably waive trial by jury in any action, proceeding or counterclaim, whether at law or in equity, brought by either of them.

**20.8 Punitive Damage Waiver.** The Company and the Franchisee irrevocably waive any claim to punitive damages in any action, proceeding or counterclaim, whether at law or in equity brought by either of them.

**20.9 Limitation of Actions.** Except for claims arising from the Franchisee's non-payment or underpayment of amounts owed to the Company or its affiliates, any and all claims arising out of or relating to this Agreement or the relationship between the Franchisee and the Company will be barred unless a judicial or arbitration proceeding is commenced within one (1) year from the date on which the party asserting the claim knew or should have known of the facts giving rise to the claims.

**20.10 Waiver.** The Company and the Franchisee may, by written instrument, unilaterally waive any obligation or restriction upon the other under this Agreement. Except as provided herein, no acceptance by the Company of any payment by the Franchisee and no failure, refusal or neglect of the Company to exercise any right under this Agreement or to insist upon full compliance by the other with its obligations hereunder, including, without limitation, any mandatory specification, standard operating procedure, shall constitute a waiver of any provision of this Agreement.

**20.11 Royalty Fee.** The Franchisee shall not, on the grounds of alleged non-performance by the Company of any of its obligations hereunder, withhold payments of the Royalty Fee or any other amounts due the Company.

**20.12 Attorneys' Fees.** In the event either the Company or the Franchisee institutes a suit, action or proceeding to enforce any term or provision of this Agreement, the prevailing party in the suit, action or proceeding or, on appeal, shall be entitled to recover from the losing party reasonable attorneys' fees to be set by the trial or appellate court in addition to costs or disbursements provided by law.

**20.13 Notices - Approvals - Force Majeure.**

**A. Notices.** All written notices and reports permitted or required to be delivered by the provisions of this Agreement or of the Manual shall be deemed so delivered at the time delivered by hand, one (1) business day after sending by telecopy or comparable electronic system or via overnight courier or two (2) business days after placed in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid and

addressed to the party's principal offices first above written or at its most current principal business address of which the notifying party has been notified.

**B. Approvals.** Unless specifically provided otherwise where the consent or approval of the Company or the Franchisee is required herein, such consent or approval shall not be unreasonably withheld. In no event, however, shall the Franchisee be entitled to make, nor shall the Franchisee make, any claim, and the Franchisee hereby waives any claim for money damages, nor shall the Franchisee claim any money damages by way of set off, counter claim or defense, based upon any claim or assertion by the Franchisee that the Company has unreasonably withheld or unreasonably delayed any consent or approval to a proposed act by the Franchisee under any of the terms of this Agreement.

**C. Force Majeure.** Whenever a time period is specified in this Agreement within which the Franchisee or the Company has a duty to perform some act, such period shall be extended for a time period corresponding to the duration of any delay caused by events or circumstances beyond their control.

**20.14 Binding Effect.** This Agreement is binding upon the parties and their respective executors, administrators, heirs, assigns and successors in interest, and shall not be modified except by written agreement by both the Franchisee and the Company, except that the Company shall have the right to unilaterally change the Manual from time to time.

**20.15 Complete Agreement.** This Agreement contains the complete expression of the agreement between the parties and there are no promises, representations or inducements except as herein provided.

**20.16 Confidentiality.** Except as required for Franchisee to conduct its regular daily business with the Company, Franchisee shall not at any time, either during or after termination of Franchisee's relationship with the Company, or in any way, disclose, disseminate, transfer and/or use, or permit anyone else to disclose, disseminate, transfer and/or use, any Confidential Information of the Company, and Franchisee shall retain all such information in trust for the sole use and benefit of the Company and/or its affiliates. Franchisee acknowledges that the Confidential Information of the Company is valuable, special and unique to the Company's business and on which such business depends, and is proprietary to the Company and its affiliates, and that the Company has protected and wishes to continue to protect the Confidential Information by keeping it secret and confidential for the sole use and benefit of the Company and its affiliates. Franchisee will take all steps necessary and all steps reasonably requested by the Company, to insure that all such Confidential Information is kept secret and confidential for the sole use and benefit of the Company and its affiliates. In so doing, Franchisee shall require and represents that each of its employees, agents and representatives complies with each and every provision of this Agreement. Upon termination of this Agreement without the necessity of any request from the Company, or at any other time the Company may in writing so request, Franchisee shall promptly deliver to the Company all materials concerning any Confidential Information, copies thereof and any other materials of the Company and/or its affiliates which are in Franchisee's possession or under Franchisee's control, and Franchisee shall not make or retain any copy, draft or extract thereof which has been made at any time.

Franchisee acknowledges that the foregoing provisions are necessary to protect the special knowledge of the Company's and its affiliates' trade secrets (which are the result of a considerable amount of time, money and effort of the Company and its affiliates to increase and maintain its sales, including product sales) which Franchisee has acquired and will acquire in carrying out Franchisee's job responsibilities as well as the Company's goodwill and customer relationships to which Franchisee has gained access through Franchisee's dealer relationship. Nothing contained herein shall be construed or considered to vest in the Franchisee any right, title or interest of any kind in or to the information disclosed or made available to it by the Company pursuant to this Agreement or otherwise. Accordingly, Franchisee acknowledges and agrees that all memoranda, notes, records, agreements, documents and other materials, as well as copies and drafts thereof, made and/or compiled by Franchisee and/or made available to Franchisee during the course of his/her dealer relationship, which relate to the Confidential Information (as stated above), is and shall remain the property of the Company. The obligations of Franchisee under this Section shall survive the termination (for any reason) or breach of this Agreement.

**20.17 Submission of Agreement.** The submission of this Agreement does not constitute an offer and this Agreement shall become effective only upon the execution hereof by the Company and the Franchisee. The date of execution by the Company shall be considered to be the date of execution of this Agreement.

**20.18 Compliance with Anti-Terrorism Laws.** Franchisee and Franchisee's owners agree to comply, and to assist the Company to the fullest extent possible in Company's efforts to comply, with Anti-Terrorism Laws (defined below). In connection with that compliance, Franchisee and Franchisee's owners certify, represent, and warrant that none of Franchisee's property or interests is subject to being blocked under, and that Franchisee and Franchisee's owners otherwise are not in violation of, any of the Anti-Terrorism Laws. "Anti-Terrorism Laws" mean Executive Order 13224 issued by the President of the United States, the USA PATRIOT Act, and all other present and future federal, state, and local laws, ordinances, regulations, policies, lists, and other requirements of any governmental authority addressing or in any way relating to terrorist acts and acts of war. Any violation of the Anti-Terrorism Laws by Franchisee or Franchisee's owners, or any blocking of Franchisee's or Franchisee's owners' assets under the Anti-Terrorism Laws, shall constitute good cause for immediate termination of this Agreement, as provided in Section 16.2(A)(14) above.

**20.19 Disclosure of Franchisee Shareholders.** Upon request by the Company, Franchisee shall disclose to the Company the names of the shareholders and their respective percentages of ownership of the Franchisee corporation, Franchisee limited liability company, or other Franchisee entity.

**THIS AGREEMENT SHALL NOT BE BINDING ON THE COMPANY UNLESS AND UNTIL IT SHALL HAVE BEEN ACCEPTED AND SIGNED BY AN AUTHORIZED OFFICER OF THE COMPANY.**

IN WITNESS WHEREOF, the Company and the Franchisee have respectively signed this Agreement as of the day and year first above written.

**THE COMPANY DISCLAIMS ANY WARRANTY OR REPRESENTATION AS TO THE POTENTIAL SUCCESS OF THE FRANCHISEE'S BUSINESS OPERATIONS UNDER THIS AGREEMENT.**

This is a legal document that grants specific rights to and imposes certain obligations on the Company and the Franchisee. Consult legal counsel to be sure that you understand your rights and duties.

**FRANCHISEE HAS READ ALL OF THE FOREGOING AGREEMENT AND HEREBY ACCEPTS AND AGREES TO EACH AND ALL OF THE PROVISIONS, COVENANTS AND CONDITIONS THEREOF AND ALL EXHIBITS/ADDENDUMS ATTACHED HERETO.**

"FRANCHISEE"

"COMPANY"

\_\_\_\_\_

**BYRIDER FRANCHISING, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A**  
**TO FRANCHISE AGREEMENT**

**BUSINESS LOCATION**

The term “Business Location” shall mean the Business owned by Franchisee and located at:

\_\_\_\_\_

Exclusive Territory: \_\_\_\_\_

Royalty Category: \_\_\_\_\_

**EXHIBIT B**  
**TO FRANCHISE AGREEMENT**

**ROYALTY CALCULATIONS**

**MULTI LOCATION FLAT RATE (MLFR) OPTION**

Location #	Category Designation		
	Founder	Interim Founder	Standard
J.D. Byrider business location #1	\$8,000	\$10,000	\$11,000
J.D. Byrider business location #2	\$8,000	\$10,000	\$10,000
J.D. Byrider business location #3	\$8,000	\$ 9,000	\$ 9,000
J.D. Byrider business location #4	\$8,000	\$ 8,000	\$ 8,000
J.D. Byrider business location #5	\$7,000	\$ 7,000	\$ 7,000
J.D. Byrider business location #6	\$6,000	\$ 6,000	\$ 6,000
J.D. Byrider business location #7	\$6,000	\$ 6,000	\$ 6,000
J.D. Byrider business location #8	\$6,000	\$ 6,000	\$ 6,000
J.D. Byrider business location #9	\$6,000	\$ 6,000	\$ 6,000
J.D. Byrider business location #10	\$6,000	\$ 6,000	\$ 6,000
Each additional J.D. Byrider business location	\$6,000	\$ 6,000	\$ 6,000

All dollar figures represent fixed dollar Royalty Fees due per month for the Business Location and any other J.D. Byrider business locations. The amount owed for each location is calculated by dividing the sum of the amounts designated in the Category Designation by the number of locations. For example, a three-store franchisee under the Standard rate would pay \$10,000 per month per store, calculated as follows: \$11,000 plus \$10,000 plus \$9,000 = \$30,000 divided by 3 stores = \$10,000 per store.

In the event a J.D. Byrider business location that qualifies for the MLFR option is governed by a franchise agreement which contains a Multi Location Flat Rate option, the rate provided under its franchise agreement for such location will be used for the calculation of the multi location flat rate if the rate for such location under its franchise agreement differs from the rate identified above.

**EXHIBIT C**  
**TO FRANCHISE AGREEMENT**

**STATE LAW ADDENDA TO FRANCHISE AGREEMENT**

The following modifications are hereby incorporated into and made a part of the Byrider Franchising, Inc., Franchise Agreement (the “Franchise Agreement”) executed as of the date indicated below. The modifications listed below shall apply to and supersede the corresponding provisions of the Franchise Agreement in order to comply with applicable state laws **if and only to the extent** the jurisdictional, definitional and other requirements of the laws of such states are met independently of the provisions of, and without reference to, this Addendum, and then only to the extent necessary to comply with such state’s laws (state laws which meet the foregoing criteria are referred to herein as “Applicable State Law”).

**ILLINOIS:** If and to the extent **Illinois** law is the Applicable State Law, the following provisions are incorporated into the Franchise Agreement:

1. **Governing Law.** The provisions of Section 20.5 of the Franchise Agreement are hereby deleted and replaced, in their entirety, with the following:

20.5 **Governing Law.** This Agreement takes effect upon its acceptance and execution by the Company in Indiana and shall be interpreted and construed in accordance with Illinois law. Any dispute between the parties, except as stated in this **Section 20.5**, shall be governed by the laws of the State of Illinois which law shall prevail in any event of conflict of law, except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. 1051 et seq.), the United States Arbitration Act (9 U.S.C. 1 et seq.), or other federal law. The provisions of any law of Illinois regarding franchises (including, without limitation, registration, disclosure, or relationship, and the regulations promulgated thereunder) shall not apply unless such law’s jurisdictional, definitional and other requirements are met independently of, and without reference to, this Section. The enforceability of the covenants set forth in Article 18 shall be determined in accordance with the law of the state in which the franchised business is located.

2. **Punitive Damage Waiver.** The provisions of Section 20.8 of the Franchise Agreement are hereby supplemented and amended by adding the following to the end of the Section:

However, nothing contained in this Section shall constitute a condition, stipulation or provision purporting to bind any person to waive compliance with any provision of the Illinois Franchise Disclosure Act or any other law of the State of Illinois, to the extent applicable.



3. **Limitation of Claims.** The provisions of Section 20.9 of the Franchise Agreement are hereby supplemented and amended by adding the following to the end of the Section:

However, nothing contained in this Section shall constitute a condition, stipulation or provision purporting to bind any person to waive compliance with any provision of the Illinois Franchise Disclosure Act or any other law of the State of Illinois, to the extent applicable.

4. **Illinois Franchise Disclosure Act.** The following provision is added to the Franchise Agreement as Section 20.19:

20.19 **ILLINOIS FRANCHISE DISCLOSURE ACT.** Section 41 of the Illinois Franchise Disclosure Act states that any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of the Act or any other law of Illinois is void.

**MARYLAND:** If and to the extent **Maryland** law is the Applicable State Law, the following provisions are incorporated into the Franchise Agreement:

1. **Releases.** The following provision is added to the end of Section 5.2(G) and Section 14.4 of the Franchise Agreement:

Pursuant to COMAR 02.02.08.161, any release required as a condition of renewal and/or assignment/transfer will not apply to claims arising under the Maryland Franchise Registration and Disclosure Law.

2. **Insolvency.** The following is added to the end of Section 16.2(A)(5) of the Franchise Agreement:

The Company and Franchisee acknowledge that certain aspects of this provision might not be enforceable under federal bankruptcy law (11 U.S.C. Sections 101, et. seq.).

3. **Governing Law.** The provisions of Section 20.5 of the Franchise Agreement are hereby deleted and replaced, in their entirety, with the following:

20.5 **Governing Law.** This Agreement takes effect upon its acceptance and execution by the Company in Indiana and shall be interpreted and construed in accordance with Illinois law. Any dispute between the parties, except as stated in this Section 20.5, shall be governed by the laws of the State of Indiana which law shall prevail in any event of conflict of law, except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. 1051 et seq.), the United States Arbitration Act (9 U.S.C. 1 et seq.), or other federal law. The provisions of any law of Illinois regarding franchises (including, without limitation, registration, disclosure, or relationship, and the regulations promulgated thereunder) shall not apply unless such

law's jurisdictional, definitional and other requirements are met independently of, and without reference to, this Section. Notwithstanding the foregoing, if and to the extent required by applicable law, Maryland law will apply to claims arising under the Maryland Franchise Registration and Disclosure Law. The enforceability of the covenants set forth in Article 18 shall be determined in accordance with the law of the state in which the franchised business is located.

4. **Limitation of Claims.** The provisions of Section 20.9 of the Franchise Agreement are hereby supplemented and amended by adding the following to the end of the Section:

However, nothing contained in this Section shall reduce the 3-year statute of limitations afforded Franchisee for bringing a claim under the Maryland Franchise Registration and Disclosure Law.

**MINNESOTA:** If and to the extent **Minnesota** law is the Applicable State Law, the following provisions are incorporated into the Franchise Agreement:

1. **Releases.** The following provision is added to the end of Section 5.2(G) and Section 14.4 of the Franchise Agreement:

Any release required as a condition of renewal and/or assignment/transfer will not apply to the extent prohibited by the Minnesota Franchise Law.

2. **Renewal and Termination.** The following is added to the end of Sections 5.2 and 14.4 of the Franchise Agreement:

To the extent Minnesota law is applicable, the Company will comply with Minn. Stat. Sec. 80C.14, Subds. 3, 4 and 5 which require, except in certain specified cases, that Franchisee be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice of non-renewal of this Agreement.

3. **Punitive Damage Waiver.** The provisions of Section 20.8 of the Franchise Agreement are hereby supplemented and amended by adding the following to the end of the Section:

To the extent required by Minnesota Franchises Law, Section 20.8 of the Franchise Agreement is deleted.

4. **Limitation of Claims.** The provisions of Section 20.9 of the Franchise Agreement are hereby supplemented and amended by adding the following to the end of the Section:

Notwithstanding the foregoing, Minnesota law provides that no action may be commenced under Minn. Stat. Sec. 80C.17 more than 3 years after the cause of action accrues.

5. **Minnesota Law.** Notwithstanding anything to the contrary contained in the Franchise Agreement, Minn. Stat. Sec. 80C.21 and Minn. Ryle 2860.4400J prohibit the Company from requiring you to waive your rights to a jury trial or to waive your rights to any procedure, forum or remedies provided for by the laws of the jurisdiction, or to consent to liquidated damages, termination penalties or judgment notes.

**NEW YORK:** If and to the extent **New York** law is the Applicable State Law, the following provisions are incorporated into the Franchise Agreement:

1. **Assignment by Company.** The following provision is added to the end of Section 14.1 of the Franchise Agreement:

To the extent required by applicable law, no transfer or assignment will be made by the Company except to an assignee who, in Company's good faith judgment, is willing and able to assume Company's obligations under this Agreement.

2. **Releases.** The following provisions are added to the end of Sections 5.2(g) and 14.4 of the Franchise Agreement:

Notwithstanding the foregoing, all rights enjoyed by Franchisee and any causes of action arising in Franchisee's favor from the provisions of Article 33 of the General Business Law of the State of New York and the regulations issued thereunder shall remain in force to the extent required by the non-waiver provisions of GBL Sections 687.4 and 687.5, as amended.

3. **Termination by Franchisee.** Section 16.3 of the Franchise Agreement is hereby supplemented and amended by adding the following additional paragraph to the end of the section:

Franchisee may also terminate this Agreement on any grounds available by law under the provisions of Article 33 of the General Business Law of the State of New York.

4. **Governing Law.** Section 20.5 of the Franchise Agreement is hereby supplemented and amended by adding the following to the end of the section:

This Section shall not be considered a waiver of any right conferred upon Franchisee by the provisions of Article 33 of the General Business Law of the State of New York, as amended, and the regulations issued thereunder.

**NORTH DAKOTA:** If and to the extent **North Dakota** law is the Applicable State Law, the following provisions are incorporated into the Franchise Agreement:

1. **Releases.** The following provision is added to the end of Section 5.2(G) and Section 14.4 of the Franchise Agreement:

Any release required as a condition of renewal and/or assignment/transfer will not apply to the extent prohibited by the North Dakota Franchise Investment Law.

2. **Arbitration.** Section 19.1 of the Franchise Agreement is hereby supplemented and amended by deleting the 4<sup>th</sup> full sentence of the Section and replacing it with the following:

All proceedings will be conducted at a suitable location chosen by the arbitrator in the Indianapolis, Indiana metropolitan area, except to the extent required by the North Dakota Franchise Investment Law (unless such a requirement is preempted by the Federal Arbitration Act).

3. **Governing Law.** Section 20.5 of the Franchise Agreement is hereby supplemented and amended by adding the following to the end of the section:

Notwithstanding the foregoing, if (a) to the extent permitted under the North Dakota Franchise Investment Law, (b) subject to the jurisdictional, definitional and other requirements of such law being satisfied independently of the provisions of, and without reference to, this Section and (c) subject to Franchisee's arbitration obligations, Franchisee may bring an action in North Dakota for claims arising under the North Dakota Franchise Investment Law.

4. **Punitive Damage Waiver.** The provisions of Section 20.8 of the Franchise Agreement are hereby supplemented and amended by adding the following to the end of the Section:

If and to the extent required by North Dakota Franchise Investment Law, Section 20.8 of the Franchise Agreement is deleted.

5. **Limitation of Claims.** The provisions of Section 20.9 of the Franchise Agreement are hereby supplemented and amended by adding the following to the end of the Section:

The statute of limitations under North Dakota law applies with respect to claims arising under the North Dakota Franchise Investment Law.

**RHODE ISLAND:** If and to the extent **Rhode Island** law is the Applicable State Law, the following provisions are incorporated into the Franchise Agreement:

1. **Governing Law.** Section 20.5 of the Franchise Agreement is hereby supplemented and amended by adding the following to the end of the section:

To the extent required by applicable law, Rhode Island law will apply to claims arising under the Rhode Island Franchise Investment Act.

**WASHINGTON:** If and to the extent **Washington** law is the Applicable State Law, the following provisions are incorporated into the Franchise Agreement:

1. **Washington Law.** The following paragraphs are added to the end of the Franchise Agreement:

In recognition of the requirements of the Washington Franchise Investment Protection Act (the “Act”) and the rules and regulations promulgated thereunder, the Franchise Agreement shall be amended as follows:

The state of Washington has a statute, RCW 19.100.180 that may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions that may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

In any arbitration involving a franchise purchased in Washington, the arbitration site shall be either in the state of Washington or in a place mutually agreed upon at the time of the arbitration, or as determined by the arbitrator.

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW shall prevail.

A release or waiver of rights executed by a franchisee shall not include rights under the Washington Franchise Investment Protection Act except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those that unreasonably restrict or limit the statute of limitations period for claims under the Act, rights or remedies under the Act such as a right to a jury trial may not be enforceable.

Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.

THUS SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Byrider Franchising, Inc.

Prospective Franchisee

By: \_\_\_\_\_

\_\_\_\_\_

**EXHIBIT D**  
**TO FRANCHISE AGREEMENT**

**PERSONAL GUARANTY**  
**AND ASSUMPTION OF FRANCHISEE'S OBLIGATIONS**

In consideration of, and as an inducement to, the execution of the above Franchise Agreement (the "Agreement") between Byrider Franchising, Inc. ("Company") and \_\_\_\_\_, dated \_\_\_\_\_, the undersigned ("Guarantor") hereby unconditionally: (1) guarantees to Byrider Franchising, Inc., and its successors and assigns, for the term of the Agreement and thereafter as provided in the Agreement, that the franchisee named therein ("Franchisee") shall punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement; and (2) agrees to be bound by, and liable for the breach of, each and every provision in the Agreement (including any amendments or modifications of the Agreement), both monetary obligations and obligations to take or refrain from taking specific actions or to engage or refrain from engaging in specific activities, including without limitation the non-competition, confidentiality, transfer, and arbitration requirements.

The undersigned waives:

- (1) acceptance and notice of acceptance by Company of the foregoing undertakings;
- (2) notice of demand for payment of any indebtedness or nonperformance of any obligations hereby guaranteed;
- (3) protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligation hereby guaranteed;
- (4) any right to require that an action be brought against Franchisee or any other person as a condition of liability; and
- (5) all rights to payments and claims for reimbursement or subrogation which Guarantor may have against Franchisee arising as a result of Guarantor's execution and performance under the Guaranty;
- (6) all other notices and legal or equitable defenses.

The undersigned consents and agrees that:

- (1) Guarantor's direct and immediate liability under this guaranty shall be joint and several;

(2) Guarantor shall render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses punctually to do so;

(3) such liability shall not be contingent or conditioned upon pursuit by Company of any remedies against Franchisee or any other person; and

(4) such liability shall not be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence which Company may from time to time grant to Franchisee or to any other person, including without limitation the acceptance of any partial payment or performance, or the compromise or release of any claims, none of which shall in any way modify or amend this guaranty, which shall be continuing and irrevocable during the term of the Agreement.

The provisions of Section 19.1 (Arbitration), Section 20.5 (Governing Law), Section 20.6 (Choice of Forum) and Section 20.12 (Attorneys' Fees) of the Agreement are incorporated into this agreement by reference and shall govern this guaranty and any dispute between the undersigned and Company.

IN WITNESS WHEREOF, the undersigned has hereunto executed this Guaranty on the same day and year as the Agreement was executed.

GUARANTOR

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**EXHIBIT E**  
**TO FRANCHISE AGREEMENT**

**J.D. BYRIDER SOFTWARE SERVICES AND USER AGREEMENT**

This Software Services and User Agreement (“Agreement”) is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between BYRIDER FRANCHISING, INC., having its principal place of business at 12802 Hamilton Crossing Blvd., Carmel, Indiana 46032 (hereinafter “Licensor” or “Company”) and Franchisee, as identified in the Franchise Agreement between Byrider Franchising, Inc., and Franchisee dated \_\_\_\_\_ (together with its agents and successors, collectively, hereinafter “Licensee”), and is made part of the Franchise Agreement. Capitalized terms used but not defined in this Agreement shall have the meanings ascribed to them in the Franchise Agreement.

1. Licensed System. Licensor has developed certain computer software programs relating to “buy-here-pay-here” automobile sales and collection management systems, including programs which allow generation of specific retail installment sales and security contracts from input data and monitoring of receivables and collection productivity by Licensee, for use in the automobile sales business (hereinafter referred to as “Licensed Software”). The Licensed Software includes components owned and licensed directly by Licensor (“Licensor Software”) and components provided from third parties and sublicensed by Licensor (“Third Party Software”). Licensor has also developed documentation associated with these programs (including end-user manuals) to assist in utilization and understanding of that software (hereinafter referred to as “Licensed Documentation”). The server portion of the Licensed Software will be hosted by Licensor from Licensor’s data processing facilities (the portion of those facilities that host the Licensed Software is hereinafter referred to as the “Hosting Facility”). Licensor has developed infrastructure standards (“Infrastructure Standards”) that permit approved access to the Licensed System. The Hosting Facility, the Licensed Software, the Infrastructure Standards and Licensed Documentation, together with any modifications, translations, updates, versions, enhancements or improvements to the software programs and/or documentation provided by Licensor to Licensee are hereinafter referred to as the “Licensed System.” Licensor agrees to provide Licensee with one (1) copy of the Licensed Software and the Licensed Documentation and all updates or revisions to the Licensed Software and the Licensed Documentation.

2. Services. In accordance with the terms and conditions of this Agreement, Licensor shall provide Licensee with usage, login, and access to self-management of security controls to the Licensed System (all of which constitute and form part of the Confidential Information) for the purpose of providing to Licensee data processing and other services related to the “buy-here-pay-here” automobile sales and collection management systems, particularly generation of specific retail installment sales and security contracts from input data and monitoring of receivables and collection productivity by Licensee (hereinafter referred to as “Services”). Licensor shall have the right to suspend or limit, in whole or in part, Licensee’s access to the Services upon ten (10) days written notice to Licensee if any amounts due Licensor are more than thirty (30) days past due or as otherwise provided in the Franchise Agreement.

3. License. Subject to all the terms and conditions of this Agreement and the Franchise Agreement, Licensor hereby grants to Licensee, and Licensee hereby accepts, a non-exclusive, indivisible, non-transferable license to access and use the Licensed System in a manner consistent with the terms of this Agreement. Such license is provided for the sole purpose of allowing Licensee access to the functions of the Licensed System necessary to obtain the Services for the sole use of Licensee's automobile sales business pursuant to and in accordance with the Franchise Agreement. It is the responsibility of the Licensee alone to ensure that the Licensed System fulfills the individual requirements and goals of the Licensee. This license extends only to use for Licensee's own internal automobile sales business purposes and not for any direct or indirect benefit of third parties. Licensee agrees to access the Licensed System only by means of the equipment and procedures substantially similar to those designated in **Appendix A** attached hereto and incorporated herein by reference. Licensee agrees to use the Licensed System solely for the purposes of business initiated and conducted at the location specified in **Appendix C**, and additional locations may not be added without Licensor's approval. Licensee shall not use or access the Licensed System in connection with the performance of data processing services or as a service bureau for any third person. Licensee further agrees that it shall not use the Licensed System in any manner that is contrary to any law or regulation of the United States or any state or country where Licensee is located. Licensee shall, at all times, use the Licensed System as directed by the Licensor from time to time. The components of the Licensed System may be changed from time to time at the Licensor's sole discretion.

4. Transmission of Data and Use of Services. Except as may be provided in this Agreement, Licensee shall be solely responsible for communications and transmission of any and all data and information of any kind between Licensee and the Licensed System (hereinafter "Customer Data"). Licensee assumes exclusive responsibility for the consequences of any instructions Licensee may give Licensor, for Licensee's failure to properly access the Licensed System in the manner prescribed by Licensor, and for Licensee's failure to supply accurate, timely, and/or complete input information. All network connectivity to and from the Licensed System is the responsibility of the Licensee and must be by means of secured network connections and controlled devices. Network configuration and access, anti-virus tools, firewalls, VPN tools, wireless access points, and possibly other means must be installed, maintained, and activated by the Licensee as directed by the Licensor. Licensee is responsible for choosing its network carrier, associated costs, and service levels. Licensor reserves the right to immediately suspend Licensee's network connectivity and use of the Licensed System if the Licensor believes in good faith that the Licensee poses a threat to the Licensed System or Licensor due to viruses, worms, hacking, or any other situation that presents reasonable dangers. Upon a showing that Licensee's use no longer poses such a threat, then Licensor shall reactivate Licensee's use of the Licensed System.

5. Undertakings of Licensor. In accordance with the terms of this Agreement, Licensor agrees to:

- a) Make its commercially reasonable efforts to maintain the Licensed System in operation twenty-four (24) hours a day, seven (7) days a week except for periods of scheduled maintenance;

- b) Use its commercially reasonable efforts to provide the Services in a manner that protects information transmitted by Licensor from unauthorized interception, modification, or replication; and
- c) Provide computer hardware and support for such hardware as detailed in this Agreement.

6. Retention of Title. Licensee agrees that all title, ownership, intellectual property rights, and similar rights, in and of the Licensed Software and Licensed Documentation and all copies in whole or in part thereof shall at all times remain with Licensor. Such intellectual property rights include, but are not limited to, patent, trademark, copyright, and/or trade secret rights. Licensee shall keep the Licensed Software and Licensed Documentation free and clear of all claims, liens, and encumbrances. Any act of Licensee purporting to create a claim, lien, or encumbrance on the Licensed Software and Licensed Documentation shall be void. Licensee further hereby acknowledges that the Licensed Software contains proprietary trade secrets and know-how, including the “look and feel” of the Licensed Software screen displays and the Licensed Software manner of operation. Licensee agrees to protect such proprietary information, trade secrets, and know how by complying with the confidentiality provisions of this Agreement.

7. Fees. Licensee shall pay to Licensor the amount specified in **Appendix B**, attached hereto and incorporated herein by reference, in accordance with the terms specified in **Appendix B**. The Initial Fee shall be paid within thirty (30) days of execution of this Agreement. The Conversion Fee shall be paid within thirty (30) days of the initial usage of the Licensed System. The Monthly Usage Fee shall be paid by the 15<sup>th</sup> of each month for the previous month’s usage. The Custom Support Fee shall be paid within thirty (30) days of invoicing. The Monthly Usage Fee and Custom Support Fee are subject to an increase or decrease at the discretion of the Licensor. An increase per fee shall not occur more than once per calendar year and is subject to at least ninety (90) days advance notice to the Licensee.

8. Term. This Agreement shall remain in full force and effect during the term of the Franchise Agreement and, unless sooner terminated as provided herein, shall expire or terminate concurrently with the expiration or termination of the Franchise Agreement.

9. Customer Data. Licensee shall remain the sole and exclusive owner of all its Customer Data and other confidential information of Licensee, regardless of whether such data is maintained on Licensor’s or Licensee’s computer systems, magnetic or other media, or any other storage or processing device. Licensor shall be permitted to view, and copy the Customer Data, and grant third party access to Customer Data at the discretion of Licensor for the purposes of analysis and maintaining the Licensed System. All such Customer Data and other confidential information of Licensee shall be subject to examination by the appropriate auditors to the same extent as if such information were on Licensee’s premises. Upon Licensee’s request, and at Licensee’s expense, Licensor shall provide promptly to Licensee copies of any and all Customer Data on media designated by Licensee. Also upon Licensee’s request, authorized personnel of Licensee shall be permitted access to the Licensor facilities utilized in providing the Services during normal business hours subject to any reasonable security procedures or other restrictions in effect at Licensor’s facilities. Notwithstanding the foregoing, Licensor may

provide access to the Customer Data, without consent of Licensee, in compliance with the order or judgment of a court of competent jurisdiction. Licensor will process items and data and perform the services under this Agreement on the basis of information furnished by Licensee. Licensor shall be entitled to rely upon any such data, information, or instructions as provided by Licensee. If any error results from incorrect input supplied by Licensee, Licensee shall be solely responsible for discovering and reporting such error and supplying data necessary to correct such error to Licensor. In no event shall Licensor be liable for any direct or indirect damages of any type resulting from data furnished by Licensee. Licensor may maintain backup Customer Data in perpetuity following the termination of this Agreement.

10. Anonymous Data. Licensee hereby grants an irrevocable non-exclusive license to Licensor and its agents, successors, and assigns to use, compile, distribute, market, sell and sublicense statistical analyses, information, data and reports utilizing data aggregated or obtained from Customer Data during the term of this Agreement (“Anonymous Data”). Licensor shall cause the Anonymous Data to be created in a manner which does not include information that personally identifies Licensee or any of its customers. Licensor’s use of Anonymous Data shall only be to the extent allowable by law. For example, Licensor shall be permitted to provide Licensee’s Customer Data to service bureaus and other parties who aggregate data for reporting and analysis purposes if the Licensor provides substantially similar Customer Data from the Franchisees of the Licensor for the same purpose. Examples of parties would include Experian, Equifax, Transunion, Teletrack, Carfax, and Wonderlic.

11. Confidential Information. Licensee acknowledges that the Licensed Software and Licensed Documentation include proprietary information containing trade secrets and copyrighted materials. Licensee shall not make the Licensed Software or Licensed Documentation or any portion thereof available by assignment, sublicense, transfer, disclosure or any other means for copying or use by any person, firm, or corporation not a party to this Agreement other than its employees, agents and successors. Licensee acknowledges that any unauthorized disclosure to or use by third parties may cause immediate and irreparable harm and significant injury to Licensor that may be difficult to ascertain. Accordingly, Licensee agrees that Licensor will have the right to obtain immediate injunctive relief to enforce obligations under this Agreement, upon breach of such obligations or threat of such breach, in addition to any other remedies to which it may be entitled.

“Confidential Information” for purposes of this Agreement shall mean and include all information not in the public domain that relates to, is embodied in, or associated with Licensor, the Licensed System and the methods of operation and nature of the foregoing, including, but not limited to, all trade secrets, know-how, engineering documents, designs and procedures, manuals, software, program listings, data file printouts, screen displays, technical data, research, or third-party confidential information disclosed to Licensor; and including the nature and existence of any of the foregoing. Confidential Information includes oral, intangible, and/or recorded forms of disclosure as well as written or tangible forms of disclosure and shall specifically include all information that if, due to its character or nature, a reasonable person in a like position and under like circumstances as Licensee would treat as confidential. Confidential Information, however, does not include information that: 1) is now or subsequently becomes generally available to the public through no fault or breach on the part of Licensee; 2) Licensee

can demonstrate to have had rightfully in its possession prior to disclosure to Licensee by Licensor; 3) is independently developed by Licensee without the use of any Confidential Information; or 4) Licensee rightfully obtains from a third party who has the right to transfer or disclose it.

Licensee will not disclose, publish, or disseminate Confidential Information to anyone other than (a) those of its employees and contractors with a demonstrable “need to know” who have a binding, written, confidentiality obligation to Licensee that protect such Confidential Information against disclosure, or (b) other employees and contractors working for Licensee that have entered into a Non-Disclosure Agreement with Licensor. Licensee shall not, and shall not attempt to, decompile, reverse engineer, disassemble, modify, network, rent, lease, or loan the Confidential Information without prior written authorization of Licensor. Licensee shall not remove, overprint, or deface any notice of copyright, patent, trademark, logo, legend, or other notices of ownership from any originals or copies of Confidential Information. Licensee further agrees not to introduce any virus, worm, Trojan horse, bomb, sniffer, or other malicious computer code or process into the Licensed System. Licensee agrees and consents that the mingling of the Confidential Information with any information of Licensee will not affect the Confidential Information status of such information. Licensee further agrees to take reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of Confidential Information. Licensee shall immediately notify Licensor of any actual or suspected unauthorized disclosure or use of the Confidential Information that comes to Licensee’s attention, and shall take all action that Licensor reasonably requests to prevent any further unauthorized use or disclosure thereof. Licensee shall not access nor attempt to gain access to data other than Licensee’s own Customer Data.

Licensee shall continue to be bound by these non-disclosure provisions after termination of this Agreement until the expiration of Licensor’s intellectual property rights and the public disclosure of Licensor’s trade secrets (through no fault of Licensee) in the Licensed System. The license granted under this Agreement is expressly conditioned upon Licensee’s continuous and complete compliance with the provisions of this Section 11.

12. Copying Prohibited. Licensee shall not make any copies of the Licensed Software in whole or part. Licensee shall not make any copies of the Licensed Documentation in whole or part [beyond the number of copies necessary for its use of the License System]. In no event shall Licensee make any copy of the Licensed Documentation available to any person other than one of its employees or agents who are bound to maintain that information in confidence and have been instructed not to make the copy available to any person other than an employee or agent of Licensee who is similarly bound.

13. Notice Marking. Licensee shall label all copies of the Licensed Documentation or separately identifiable portions thereof made by Licensee as follows:

© Byrider Franchising, Inc. All rights reserved. Copies in whole or part may only be made by express written permission of the copyright owner.

Such copyright notices shall be prominently displayed so as to be readily noticed by anyone having access to copies of the Licensed System or any portions thereof. Licensee shall not remove, hide, or disable any of the Licensor's copyright notices on the Licensed System. Except as expressly provided in Section 3, no rights are granted under this Agreement either expressed or implied with respect to any copyrights.

14. Security and Disaster Recovery. Licensor agrees to take commercially reasonable efforts to store, or cause to be stored, in a secure location remote from Licensor, additional copies of all records and Customer Data and any Licensor resources required to provide the Services, and additional tapes or disks necessary to reproduce all such records and Customer Data, as well as source or object code of all software included in the Licensed System on a reasonable periodic basis. Licensee acknowledges that such backup information will not be entirely current. Licensor shall establish and maintain safeguards against the destruction, loss or damage to or alteration of Customer Data in its possession which are no less rigorous than those maintained by Licensor for its own data and software, and use reasonable care in accordance with standard commercial practices to minimize the likelihood of any damage to or loss of such Customer Data. Licensor further agrees to maintain a Disaster Recovery Plan. "Disaster" shall mean any unplanned interruption of operations that materially affect the ability of Licensor to provide Services beyond a reasonable period of interrupted service. Such Plan shall include means for providing alternate electrical power to Licensor computer systems and for restoration of backed-up data. At all times, Licensee shall provide and maintain a secure network connection to the Licensed System. At all times, Licensee shall cause its personnel to access the Licensed System in a reasonably secure work environment to prevent any unauthorized use or access to the Licensed System.

15. Limited Warranty. Licensor warrants that the Licensor's Software will substantially conform to Licensor's current published documentation when delivered to Licensee. **The Third Party Software is not warranted by Licensor.** In the event that the Licensee provides Licensor with written documentation within ninety (90) days from the first use of the Licensed Software by the Licensee verifying that there is a non-conformity in the Licensed Software which significantly impairs a vital business function not caused by defects in Third Party Software or misuse by Licensee, and Licensee is in full compliance with the terms of this Agreement, then Licensor, at Licensor's election, either 1) shall correct the non-conformity free of charge, or 2) shall provide an alternative procedure or "work around" whereby the non-conformity will not have a significant effect on the Licensee's use of the Licensed Software. Should such non-conformities be due solely to defects in Third Party Software, Licensor shall have no liability to Licensee for such defect and Licensee's sole remedy for such defect shall be from the Third Party. Licensee shall provide Licensor, at no charge, sufficient access to, support, and test time on Licensee's equipment to identify the non-conformity, certify that the non-conformity results from error of the Licensed Software, and certify whether or not the non-conformity has been remedied. Licensee agrees to establish adequate back up plans, including for personnel to aid in non-conformity diagnosis by Licensor and to assist in the repair of defects by Licensor, in the event of non-conformities, errors, defects or other malfunctions in the Licensed Software. Licensee shall also implement sufficient procedures to satisfy its own requirements for security and accuracy of input and output. Licensor does not guarantee any retroactive

compatibility between new versions, releases, fixes, enhancements, or other modifications to the Licensed System.

THE FOREGOING WARRANTY IS NULL AND VOID IF THE ALLEGED NON-CONFORMITIES ARE PROXIMATELY CAUSED BY ANY OF THE FOLLOWING:

- A. ANY UNAUTHORIZED MODIFICATION OR USE OF THE LICENSED SYSTEM BY LICENSEE,
- B. LICENSEE'S FAILURE TO PERFORM A REQUIRED DUTY OR DUTIES, OR
- C. LICENSEE PERFORMING A REQUIRED DUTY IN AN IMPROPER MANNER.

16. Licensed System Maintenance and Support.

a. Licensor may make corrections, updates, and modifications of the Licensed System ("enhancements") from time to time. Licensor shall make the enhancements to the Licensed System available to Licensee without additional charge except for any enhancements which constitute Third Party Software, or changes to Infrastructure Standards. Licensor will provide Licensee any enhancements which constitute Third Party Software or Infrastructure Standards for an amount equal to Licensor's cost therefor. Further, Licensor may or may not, at its option, repair or replace any verifiable non-conformities in the Licensed Software programs such that these programs conform to the documentation of the Licensed System and provide those repairs or replacements to Licensee without additional charge. Also, Licensor will provide consultation by telephone to assist Licensee to resolve difficulties of Licensee related to the use of the Licensed Software. The maintenance services contemplated by this paragraph will be provided generally from 9 a.m. to 5 p.m., Eastern Daylight Time, Monday through Friday, excluding holidays.

b. Licensee shall designate an appropriate and knowledgeable person to serve as Licensee's liaison with Licensor and through whom all contacts and questions shall be presented to Licensor. Licensor shall not be obligated to provide information or answer inquiries from Licensee except through this liaison person.

c. If Licensee requests on-site assistance from Licensor, and Licensor agrees that such on-site assistance is reasonably necessary, Licensee will additionally pay Licensor's travel, the then current Custom Support Fee charged by Licensor, and other related business expenses actually incurred in the performance of such services. These expenses will be invoiced separately other fees, and payment shall be due in full from Licensee within thirty (30) days of the date of invoice.

d. In the event that Licensee or any third party makes any unauthorized changes, modifications, enhancements, or improvements to the Licensed System, Licensor shall be relieved of its obligations to provide services under this Agreement for any portions of the Licensed System that have been effected, directly or indirectly, by such changes,

modifications, enhancements, or improvements. Such unauthorized alterations in the Licensed System and/or Licensee's default of any of its obligations under this Agreement shall be grounds for termination by Licensor of this Agreement for cause according to the provisions of Section 24 of the Agreement.

e. If Licensee requests assistance from Licensor, and Licensor in its sole judgment determines the assistance is beyond reasonable and customary assistance provided under this Agreement, the Licensor will advise the Licensee that the then current Custom Support Fee will apply. The Licensor will provide the assistance only after the Licensee agrees in writing to the Licensor to pay for such services. These expenses will be invoiced separately from other fees, and payment shall be due in full from Licensee within thirty (30) days of the date of invoice.

17. Disclaimer of Warranties. THE LIMITED WARRANTY IN SECTION 15 IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSOR SHALL NOT BE LIABLE FOR ANY INCIDENTAL AND/OR CONSEQUENTIAL DAMAGES TO LICENSEE OR ANY THIRD PARTY OCCURRING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE LICENSED SYSTEM OR ITS SERVICES UNDER THIS AGREEMENT, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH INCIDENTAL AND/OR CONSEQUENTIAL DAMAGES. FURTHER, LICENSOR SHALL NOT BE LIABLE FOR ANY DIRECT OR INDIRECT DAMAGES OF ANY TYPE OF NATURE, EXCEPT AS PROVIDED IN SECTIONS 20 AND 21 BELOW. LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE SERVICES SHALL BE UNINTERRUPTED. LICENSOR SHALL NOT BE RESPONSIBLE FOR ANY LOSS OF PROFITS, ANY INDIRECT OR CONSEQUENTIAL DAMAGES RESULTING FROM DAMAGE TO DATA, OR DAMAGES DUE TO HACKING OR AN EMPLOYEE OF LICENSEE DAMAGING DATA/SYSTEM, OR ANY DAMAGES DUE TO OPERATION OF THE THIRD PARTY SOFTWARE, EVEN IF LICENSOR HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

18. Retail Installment Sales and Security Contracts. LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE VALIDITY, ACCURACY, APPROPRIATENESS, USEFULNESS OR OTHER ASPECTS OR CHARACTERISTICS OF ANY RETAIL INSTALLMENT SALES AND SECURITY CONTRACT CREATED BY LICENSEE USING THE LICENSED SYSTEM.

19. Limited Remedies.

a. Except as provided in this paragraph, Licensee's sole remedy for a breach of the warranty of the Licensed System provided in Section 15 is limited to the remedy provided in that Section. If, thirty (30) days after the giving of the required notice described in Section 15, the non-conformity of the Licensor Software remains uncured and Licensor has not provided an alternative procedure, then Customer may terminate this Agreement by written notice given within ten (10) days after the end of the cure period. Upon the Licensee returning the Licensed System to Licensor under the terms stated in Section 25 of this Agreement, Licensor



shall return all fees covered by **Appendix B** and actually paid by the Licensee to Licensor and Licensor shall have no further obligations to Licensee.

b. Licensee's sole remedy for any failures of Licensor under Section 16 is, thirty (30) days after detailed written notice of the breach has been provided to Licensor and the breach remains uncured, to terminate this Agreement by written notice given within ten (10) days after the end of the cure period and have returned to it the fees actually paid by the Licensee to Licensor for the sixty (60) days preceding the date of termination.

c. The obligations of Licensor under this paragraph are the Licensee's sole remedy for any violation of Licensor's obligations under Sections 5 and 14. To the extent that any Customer Data must be corrected, recreated, restored or reprocessed due to any fault or negligence of Licensor, its employees or agents, or due to operation of Licensor Software, or due to a breach by Licensor of any of its warranties hereunder, Licensor will be responsible for the cost of taking commercially reasonable efforts to correct, recreate, restore or reprocess the data at no cost to Licensee. Both parties agree to fully cooperate with one another to effectuate the prompt correction, recreation, restoration or reprocessing of any Customer Data.

d. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 21, LICENSOR AND ITS THIRD PARTY LICENSORS SHALL NOT BE RESPONSIBLE FOR ANY CLAIMS AGAINST LICENSEE BY ANY OTHER PARTY NOR, EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, SHALL LICENSOR OR ITS THIRD PARTY LICENSORS BE LIABLE FOR ANY LOSS OF PROFITS, INTERRUPTION OF BUSINESS, NON-AVAILABILITY OF THE LICENSED SYSTEM OR THE SERVICES UNDER THIS AGREEMENT, LOSS OF DATA, OUT-OF-POCKET EXPENSES OR ANY OTHER DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, HOWEVER CAUSED, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, WARRANTY, STATUTORY RIGHTS OR ANY OTHER BASIS ARISING OUT OF LICENSEE'S USE OF THE LICENSED SYSTEM, THE MARKETING, DELIVERY OR SUPPORTING THEREOF, OR OTHERWISE ARISING PURSUANT TO THIS AGREEMENT.

20. Limitation of Liability. LICENSOR'S AGGREGATE LIABILITY TO LICENSEE FOR ANY CAUSE WHATSOEVER IS LIMITED TO AN AMOUNT EQUAL TO THE FEES COVERED BY **APPENDIX B** AND ACTUALLY PAID BY LICENSEE FOR USE OF THE LICENSED SYSTEM DURING THE THEN MOST RECENT 12 MONTH PERIOD OF TIME PRECEDING THE DATE OF THE EVENT (OR, IF MORE THAN ONE EVENT, THE FIRST EVENT) GIVING RISE TO THE LIABILITY.

21. Intellectual Property Indemnification. Licensor, at its own expense, shall defend any and all claims, actions and causes of actions brought against Licensee to the extent that it is based on a claim that the Licensed System infringes a patent, copyright, or intellectual or industrial property right of any person, firm, or corporation not a party to this Agreement, provided that (a) Licensee promptly notifies Licensor of any potential or threatened claims and the commencement of any such legal action, (b) Licensee has not by any act of commission or omission prejudiced Licensor's ability to successfully defend such litigation, and (c) Licensor

shall have exclusive control of the defense to such legal action and of all negotiations for settlement or compromise. If these conditions are met, Licensor shall indemnify and hold Licensee harmless with respect to all costs and damages actually awarded against Licensee arising out of such legal action, subject to the limitations of Section 20. In the event that the Licensed System becomes, or in Licensor's opinion is likely to become, the subject of a claim of infringement of a patent, copyright, or other intellectual or industrial property right of any person, firm or corporation not a party to this Agreement, Licensor may, at its option, either secure Licensee's right to continue using the Licensed System, replace or modify the Licensed System so as to make it non-infringing without materially impairing the Licensed System's utility, or, if neither of these alternatives is reasonably available to Licensor, terminate this Agreement upon one (1) month's written notice. In the event that Licensor elects to so terminate this Agreement to avoid infringement within twelve (12) months of delivery of the Licensed system to Licensee, then Licensor shall refund to Licensee the price paid for usage, login, and security rights to the software under this Agreement according to the percentage of days within that twelve (12) month period that Licensee did not have access to the Licensed System. If, however, Licensee notifies Licensor in writing during the one (1) month after Licensor's notice of termination under this Section that Licensee elects to continue to be licensed with respect to the Licensed System, then Licensee shall undertake, at Licensee's expense, the defense of any such legal action against Licensee and/or Licensor arising from Licensee's use of the Licensed System and shall indemnify and hold Licensor harmless with respect to all costs, damages, and attorney fees actually incurred and attributable to such continued use or further defense of said legal action after such notice is given to Licensor. Licensor shall have no liability to Licensee if the alleged infringement is based upon a use other than of a current, unaltered version of the Licensed System available from Licensor or upon a use or combination of the Licensed System with programs or data not supplied by Licensor. The foregoing states the entire liability of Licensor with respect to infringement.

22. Licensee's Indemnification. The Licensed System permits the Licensee to create its own retail installment sales and security contracts for which Licensee is solely responsible. Licensee is solely responsible for its use, preparation and transmission of Customer Data and the accuracy of Customer Data, or any other aspect, including, for example, Annual Percentage Rate Calculations, of any retail installment sales and security contract created by Licensee through its use of the Licensed System. Licensee shall indemnify and hold Licensor harmless against claim, action, or cause of action which arises from the use of the Licensed System by Licensee under this Agreement including, but not limited to, attorneys fees actually incurred, costs, expenses, damages, judgments, awards, and penalties, provided that the same does not arise solely from Licensor's negligence or willful misconduct. Further, Licensee shall be liable to Licensor and any affected franchisee of Licensor for any damages, direct or consequential, caused by any use of the Licensed System by Licensee that has not been approved by Licensor in writing. Further, Licensee shall be liable to Licensor and any affected franchisee of Licensor for any damages, direct or consequential, caused by a third party's activities which result from Licensee's use of the Licensed System in any manner which has not been approved by Licensor in writing.

23. Injunction. If Licensee attempts to use, copy, license or convey the Licensed System or any portion thereof or any copies thereof in a manner contrary to the terms of

this Agreement, Licensor shall have, in addition to any other remedy, the right to injunctive relief. Licensee hereby acknowledges that other remedies are inadequate.

24. Termination. This Agreement shall automatically and without notice expire or terminate concurrently with the expiration or termination of the Franchise Agreement. In addition, if, at any time, Licensee defaults in the performance of any of its obligations under this Agreement and such default is not corrected within ten (10) days after Licensor has given Licensee written notice specifying such default, in addition to any other remedies that it may have, Licensor shall have the right to terminate this Agreement for cause by giving written notice of termination to Licensee, and this Software License Agreement shall then immediately terminate. Termination shall not relieve either party of its pre-existing obligations under this Agreement. Upon initiation of any bankruptcy or receivership proceedings by or against Licensee, or upon execution of a deed of trust or assignment for the benefit of creditors or any other transfer or assignment of a similar nature by Licensee, Licensor reserves the right to terminate this Agreement immediately or at anytime thereafter.

Except as provided in Section 19(a) above, upon termination of this Agreement, Licensor shall not have any obligation to refund any fees paid to it by Licensee for use of the Licensed System.

Licensee further acknowledges and agrees that Licensor may terminate this Agreement or suspend Licensee's access to and use of the Licensed Software and Licensed Documentation under and as described in Section 17.2 of the Franchise Agreement.

25. Return of the Licensed System. Immediately upon termination of the Agreement, Licensee shall cease all use, and make no further use, in whole or part, of the Licensed System and shall return the Licensed System and all copies thereof, including any partial copies, to Licensor. With this return of the Licensed System, Licensee shall certify in writing that the original and all copies in whole and part and in any form of the Licensed System have been delivered to Licensor.

26. Infringement. Licensee shall promptly notify Licensor in writing of potential or threatened infringement of Licensor's proprietary rights in the Licensed System by any person, firm, or corporation not a party to this Agreement of which Licensee becomes aware during the term of this Agreement.

27. Shipment. All risk of loss or damage to the Licensed System after it is received by Licensee shall be borne by Licensee. Licensee shall pay the shipping and handling charges for delivery of the Licensed System or any hardware procured by Licensor for Licensee under this Agreement.

28. Program Services. Nothing in this Agreement shall be construed to imply that Licensor has any additional obligation to furnish any additional services or material other than those specifically indicated herein.

Licensee agrees that Licensor shall own and have the right to make, use, sell or license to others the Licensed System and any improvements to the Licensed System or any new Licensed System developed by Licensor as a result of any program services to Licensee under this or any other agreement with Licensor relating to the Licensed System.

29. Hardware Purchase and Warranty Disclaimer. Solely as an accommodation to Licensee, Licensor agrees to obtain on Licensee's behalf the computer hardware and equipment specified in **Appendix A** hereto and to provide that hardware and equipment to Licensee at Licensee's cost set forth in **Appendix B** for Licensee's use with the Licensed System. Licensee acknowledges Licensor does not manufacture any of that hardware and equipment. LICENSOR PROVIDES NO WARRANTY WHATSOEVER FOR ANY HARDWARE OR EQUIPMENT PROVIDED TO LICENSEE. THAT HARDWARE AND EQUIPMENT IS PROVIDED BY LICENSOR STRICTLY AS IS. The original manufacturer of that hardware and equipment may, however, provide warranties that may be passed through or otherwise available to Licensee. If so, Licensor will assist Licensee in obtaining any such warranties for Licensee's benefit and use. Licensee shall not, however, hold Licensor responsible in any way for any defects or damage in the hardware or equipment not caused solely by Licensor's intentional misconduct.

30. Notices. All written notices and reports permitted or required to be delivered by the provisions of this Agreement shall be deemed so delivered at the time delivered by hand, one (1) business day after sending by telecopy or comparable electronic system or via overnight courier or two (2) business days after placed in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid and addressed to the party's principal offices first above written or at its most current principal business address of which the notifying party has been notified.

31. Assignment and Sublicense. This Agreement and any of Licensee's rights with respect to use of the Licensed System is personal in nature and may not be assigned, sublicensed, used to provide business services at any location other than designated in **Appendix C** of this Agreement, or otherwise transferred by Licensee without prior written consent from Licensor.

32. Benefit. This Agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, successors in the interest and permissible assigns of the parties to this Agreement.

33. Taxes. Licensee shall pay all sales, property, excise, use and other federal, state or local taxes and charges hereinafter due and payable by reason of this Agreement of the Licensed System or its use or possession of the same by Licensee. If a certificate of exemption or similar document is to be used in order to exempt Licensee from such liability, Licensee shall furnish a copy of such certificate or document to Licensor upon request.

34. Severability. If any portion of this Agreement is found to be invalid or unenforceable, such portion of the Agreement shall be narrowed to the extent necessary to make it valid and enforceable. If any portion of this Agreement cannot be so narrowed, the remaining

portions of this Agreement shall remain in full force and effect and shall continue to be binding upon the parties.

35. Waiver. Failure of either party to this Agreement to exercise any of its rights under this Software License Agreement in a particular instance shall not be construed as a waiver of those rights or any other rights under this Agreement for any purpose.

36. Resolution of Disputes. The parties agree that all controversies, disputes or claims arising out of or related to this Agreement, the relationship between Licensor and Licensee and the validity of this Agreement must be submitted for binding arbitration in accordance with Section 19.1 of the Franchise Agreement, the provisions of which are incorporated and adopted herein, in their entirety, as though copied *in extenso*.

37. Adoption and Incorporation of Certain Provisions of the Franchise Agreement. The parties hereby agree that the following provisions which are set forth in the Franchise Agreement shall have equal applicability to and under this Agreement, to-wit: Section 20.5 (Governing Law), Section 20.6 (Choice of Forum), Section 20.7 (Jury Trial Waiver), Section 20.8 (Punitive Damage Waiver), Section 20.9 (Limitation of Actions), Section 20.12 (Attorneys' Fees), and Section 20.18 (Compliance with Anti-Terrorism Laws). Each of the foregoing provisions are copied herein and adopted by the parties to this Agreement in their entirety.

38. Delay. Licensor shall not be deemed to be in default of any provision of this Agreement or for failures in performance under this Agreement resulting from acts or events beyond the reasonable control of Licensor, including, but not limited to, delays in transportation, storms, extreme weather conditions, fire, explosion, flood, strike, riot, war, mobilization, civil unrest, import or export circumstances, failure or unavailability of communications, power or telephone lines, supplies or service, delay in delivery, failure or malfunction of equipment or of software not directly supplied and supported by Licensor, or other similar catastrophes, or other acts of God.

39. Export Control. Software, including technical data, is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Specifically, the Licensed Software may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. You may not use the Licensed Software in violation of this Agreement or in violation of United States law, including laws which prohibit, without limitation, the development, design, manufacture or production of nuclear, missiles, or chemical or biological weapons.

40. Terms and Conditions Regarding Use of Microsoft Software. Licensor is providing certain Microsoft software products to Licensee as a service by Licensor. These products include computer software and may include associated media, printed materials, and "online" or electronic documentation. The license terms for the Microsoft software products is

set forth in the Customer License Terms attached as **Appendix D**, which is incorporated herein by this reference.

41. Amendment. No one has authority to amend this Agreement on behalf of Licensor except an officer of Licensor in writing.

Byrider Franchising, Inc. (“Licensor”)

\_\_\_\_\_  
 (“Licensee”)

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name:

Printed Name: \_\_\_\_\_

Title: President

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## APPENDIX A

### **Licensee Computer System Requirements Per Location**

Example as of January 2010:

Your requirements and specifics may vary. Quantity and exact model types will be determined on a case-by-case basis. Typical items and quantities are stated below. All prices are approximate and subject to change. All costs are U.S. dollars.

<b>Required Items</b>	<b>Quantity</b>	<b>Approximate Cost</b>
Wall mount rack	1	\$260.00
Rack mount shelf	1	\$103.00
TrippLite SmartPro 500 RM UPS	1	\$203.00
TrippLite Rack Mount Power Strip (PDU)	1	\$78.00
Okidata ML320 turbo	1	\$414.00
HP LaserJet P3005n network printer	1	\$770.00
HP LaserJet P2035 check printer	1	\$240.00
Power Connect 2724 24 port 10/100 switch	1	\$370.00
Business Recovery Network Solution	1	\$1700.00
USR 56K External Modem	1	\$115.00
Cisco 1841 router	1	\$2600.00
SMARTnet Standard Maintenance – 1800 series router *	1	\$150.00
Cisco ASA firewall	1	\$770.00
Network Policy Assurance*	1	\$100.00
6 foot parallel printer cable	1	\$8.00
3 foot cat5 patch cable	30	\$100.00
7 foot cat5 patch cable	35	\$140.00
14 foot cat5 patch cable	30	\$180.00
20-user License Pack for SecureCRT	1	\$2120.00
PC (price varies depending upon build options)	10	\$15,000.00

<b>Optional Items</b>	<b>Quantity</b>	<b>Approximate Cost</b>
JDBS VPN Software User License	1	\$100.00
JDBS VPN Annual Service Subscription *	1	\$100.00
Websense Internet filter	TBD	\$900.00
HP LaserJet CP3525n color laser printer	2	\$2070.00

\* This item is billed yearly and is a required annual maintenance fee.

## APPENDIX B

### License Fees

Initial Fee: [to be determined]

Data Conversion Fee: [to be determined]

Monthly Usage Fee: \$0.00

Custom Support Fee: \$0.00

#### Recurring Fees:

Costs are representative as of January 2010.

Retail Installment Contract Usage: \$3.60 per form, billed quarterly in advance based upon expected usage.

Notice of Incompleteness Letters: \$1.00 per letter, billed quarterly for actual usage.

SmartNet ASA Firewall annual maintenance: \$115.00.

Finance By Phone: \$2.95 per Lead.

GoJDB: \$1.95 per Lead.

Privacy Notices sent annually to customers (optional): \$1.05 per customer letter.

Maintenance Fee to Third Party Vendors: [to be determined]



**APPENDIX C**

**Licensed Location**

Street Address:	
City:	
County:	
State/Province:	
Country:	

\_\_\_\_\_  
Licensor Signature

\_\_\_\_\_  
Licensee Signature

## APPENDIX D

### CUSTOMER LICENSE TERMS

#### TERMS AND CONDITIONS REGARDING USE OF MICROSOFT SOFTWARE

This document concerns your use of Microsoft software, which includes computer, software provided to you by **Byrider Franchising, Inc.** as described below, and may include associated media, printed materials, and "online" or electronic documentation (individually and collectively "SOFTWARE PRODUCTS"). **Byrider Franchising, Inc.** does not own the SOFTWARE PRODUCTS and the use thereof is subject to certain rights and limitations of which **Byrider Franchising, Inc.** needs to inform you. Your right to use the SOFTWARE PRODUCTS is subject to your agreement with **Byrider Franchising, Inc.**, and to your understanding of, compliance with and consent to the following terms and conditions, which **Byrider Franchising, Inc.** does not have authority to vary, alter or amend.

**1. DEFINITIONS.**

**"Client Software"** means software that allows a Device to access or utilize the services or functionality provided by the Service Software.

**"Device"** means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, "smart phone", or other electronic device.

**"Service Software"** means software that provides services or functionality on a computer acting as a server.

**"Redistribution Software"** means the software described in Paragraph 4 ("Use of Redistribution Software") below.

- 2. OWNERSHIP OF SOFTWARE PRODUCTS.** The SOFTWARE PRODUCTS are licensed to **Byrider Franchising, Inc.** from an affiliate of the Microsoft Corporation ("Microsoft"). All title and intellectual property rights in and to the SOFTWARE PRODUCTS (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text and "applets" incorporated into the SOFTWARE PRODUCTS) are owned by Microsoft or its suppliers. The SOFTWARE PRODUCTS are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your possession, access, or use of the SOFTWARE PRODUCTS does not transfer any ownership of the SOFTWARE PRODUCTS or any intellectual property rights to you.
- 3. USE OF CLIENT SOFTWARE.** You may use the Client Software installed on your Devices by **Byrider Franchising, Inc.** only in accordance with the instructions, and only in connection with the services, provided to you by **Byrider Franchising, Inc.** The terms of this document permanently and irrevocably supersede the terms of any Microsoft End User License Agreement which may be presented in electronic form during your use of the Client Software.
- 4. USE OF REDISTRIBUTION SOFTWARE.** In connection with the services provided to you by **Byrider Franchising, Inc.**, you may have access to certain "sample", "redistributable" and/or software development ("SDK") software code and tools (individually and collectively "Redistribution Software"). **YOU MAY NOT USE, MODIFY, COPY, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER USE RIGHTS (SPUR) APPLICABLE TO Byrider Franchising, Inc., WHICH TERMS MUST BE PROVIDED TO YOU BY Byrider Franchising, Inc.** Microsoft does not permit you to use any Redistribution Software unless you expressly agree to and comply with such additional terms, as provided to you by **Byrider Franchising, Inc.**
- 5. COPIES.** You may not make any copies of the SOFTWARE PRODUCTS; provided, however, that you may (a) make one (1) copy of Client Software on your Device as expressly authorized by **Byrider Franchising, Inc.**; and (b) you may make copies of certain Redistribution Software in accordance with paragraph 4 (Use of Redistribution Software). You must erase or destroy all such Client Software and/or Redistribution software upon termination or cancellation of your agreement with **Byrider Franchising, Inc.**, upon notice from **Byrider Franchising, Inc.** or upon transfer of your Device to another person or entity, whichever first occurs. You may not copy any printed materials accompanying the SOFTWARE PRODUCTS.
- 6. LIMITATIONS ON REVERSE ENGINEERING, DECOMPILATION AND DISASSEMBLY.** You may not reverse engineer, decompile, or disassemble the SOFTWARE PRODUCTS, except and only to the extent that applicable law, notwithstanding this limitation expressly permits such activity.
- 7. NO RENTAL.** You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the SOFTWARE PRODUCTS to any third party, and you may not permit any third party to have access to and/or use the functionality of the SOFTWARE PRODUCTS.
- 8. TERMINATION.** Without prejudice to any other rights, **Byrider Franchising, Inc.** may terminate your rights to use the SOFTWARE PRODUCTS if you fail to comply with these terms and conditions. In the event of termination or cancellation, you must stop using and/or accessing the SOFTWARE PRODUCTS, and destroy all copies of the SOFTWARE PRODUCTS and all of its component parts.
- 9. NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT.** ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY **Byrider Franchising, Inc.** AND NOT BY MICROSOFT OR ITS AFFILIATES OR SUBSIDIARIES.
- 10. PRODUCT SUPPORT.** Any product support for the SOFTWARE PRODUCTS is provided to you by **Byrider Franchising, Inc.** and is not provided by Microsoft or its affiliates or subsidiaries.
- 11. NOT FAULT TOLERANT.** THE SOFTWARE PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE SOFTWARE PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.

12. **EXPORT RESTRICTIONS.** The SOFTWARE PRODUCTS are of U.S. origin for purposes of U.S. export control laws, national laws that apply to the SOFTWARE PRODUCTS, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.
13. **LIABILITY FOR BREACH.** In addition to any liability you may have to **Byrider Franchising, Inc.**, you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions.

**EXHIBIT F**  
**TO FRANCHISE AGREEMENT**

**BYRIDER FRANCHISING, INC.**

**DISCLOSURE ACKNOWLEDGMENT STATEMENT**

BYRIDER FRANCHISING, INC. (“Franchisor”), through the use of this document, desires to ascertain (a) that the undersigned, individually and as a representative of any legal entity established to acquire the franchise rights (“Franchisee”), fully understands and comprehends that the purchase of a BYRIDER sales finance franchise is a business decision, complete with its associated risks, and (b) that Franchisee is not relying upon any oral statement, representations, promises or assurances during the negotiations for the purchase of the franchise which have not been authorized by the Franchisor. In that regard, the undersigned acknowledges that:

2. The Franchisee recognizes and understands that business risks, which exist in connection with the purchase of any business, make the success or failure of the franchise subject to many variables, including, among other things, the skills and abilities of the Franchisee, the hours worked by the Franchisee, competition, interest rates, the economy, inflation, business location, operation costs, lease terms and costs and the market place. The Franchisee hereby acknowledges its awareness of and willingness to undertake these business risks.

3. The Franchisee acknowledges receipt of the Franchisor’s Franchise Disclosure Document and Exhibits (collectively, the “FDD”). The Franchisee acknowledges that it has had the opportunity to personally and carefully review these documents. Furthermore, the Franchisee has been advised to seek professional assistance, to have professionals review the documents and to consult with other franchisees regarding the risks associated with the purchase of the franchise.

4. The Franchisee agrees and states that the decision to enter into this business risk is in no manner predicated upon any oral representations, assurances, warranties, guarantees or promises made by the Franchisor or any of its officers, employees or agents (including any franchise broker) as to the likelihood of success of the franchise. Except as contained in the Franchisor’s FDD, the Franchisee acknowledges that it has not received any information from the Franchisor or any of its officers, employees or agents (including any franchise broker) concerning actual, average, projected or forecasted franchise sales, profits or earnings. If the Franchisee believes that it has received any information concerning actual, average, projected or forecasted franchise sales, profits or earnings other than those contained in the FDD, please describe these in the space provided below or write “None.”

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The Franchisee further acknowledges that the President of the United States of America has issued Executive Order 13224 (the "Executive Order") prohibiting transactions with terrorists and terrorist organizations and that the United States government has adopted, and in the future may adopt, other anti-terrorism measures (the "Anti-Terrorism Measures"). The Franchisor therefore requires certain certifications that the parties with whom it deals are not directly or indirectly involved in terrorism. For that reason, the Franchisee hereby certifies that neither it nor any of its employees, agents, or representatives, nor any other person or entity associated with the Franchisee, is:

- (a) a person or entity listed in the Annex to the Executive Order;
- (b) a person or entity otherwise determined by the Executive Order to have committed acts of terrorism or to pose a significant risk of committing acts of terrorism;
- (c) a person or entity who assists, sponsors, or supports terrorists or acts of terrorism;  
or
- (d) owned or controlled by terrorists or sponsors of terrorism.

The Franchisee further covenants that neither it nor any of its employees, agents, or representatives, nor any other person or entity associated with the Franchisee, will during the term of the Franchise Agreement become a person or entity described above or otherwise become a target of any Anti-Terrorism Measure.

Acknowledged this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**FRANCHISEE:**

Sign here if you are taking the franchise as an  
**INDIVIDUAL(S)**

Sign here if you are taking the franchise as a  
**CORPORATION or LIMITED LIABILITY COMPANY**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name of Legal Entity

Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

**EXHIBIT C**  
**TO FRANCHISE AGREEMENT**

**STATE LAW ADDENDA TO FRANCHISE AGREEMENT**

The following modifications are hereby incorporated into and made a part of the Byrider Franchising, Inc., Franchise Agreement (the “Franchise Agreement”) executed as of the date indicated below. The modifications listed below shall apply to and supersede the corresponding provisions of the Franchise Agreement in order to comply with applicable state laws **if and only to the extent** the jurisdictional, definitional and other requirements of the laws of such states are met independently of the provisions of, and without reference to, this Addendum, and then only to the extent necessary to comply with such state’s laws (state laws which meet the foregoing criteria are referred to herein as “Applicable State Law”).

**ILLINOIS:** If and to the extent **Illinois** law is the Applicable State Law, the following provisions are incorporated into the Franchise Agreement:

1. **Governing Law.** The provisions of Section 20.5 of the Franchise Agreement are hereby deleted and replaced, in their entirety, with the following:

20.5 **Governing Law.** This Agreement takes effect upon its acceptance and execution by the Company in Indiana and shall be interpreted and construed in accordance with Illinois law. Any dispute between the parties, except as stated in this **Section 20.5**, shall be governed by the laws of the State of Illinois which law shall prevail in any event of conflict of law, except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. 1051 et seq.), the United States Arbitration Act (9 U.S.C. 1 et seq.), or other federal law. The provisions of any law of Illinois regarding franchises (including, without limitation, registration, disclosure, or relationship, and the regulations promulgated thereunder) shall not apply unless such law’s jurisdictional, definitional and other requirements are met independently of, and without reference to, this Section. The enforceability of the covenants set forth in Article 18 shall be determined in accordance with the law of the state in which the franchised business is located.

2. **Punitive Damage Waiver.** The provisions of Section 20.8 of the Franchise Agreement are hereby supplemented and amended by adding the following to the end of the Section:

However, nothing contained in this Section shall constitute a condition, stipulation or provision purporting to bind any person to waive compliance with any provision of the Illinois Franchise Disclosure Act or any other law of the State of Illinois, to the extent applicable.

3. **Limitation of Claims.** The provisions of Section 20.9 of the Franchise Agreement are hereby supplemented and amended by adding the following to the end of the Section:

However, nothing contained in this Section shall constitute a condition, stipulation or provision purporting to bind any person to waive compliance with any provision of the Illinois Franchise Disclosure Act or any other law of the State of Illinois, to the extent applicable.

4. **Illinois Franchise Disclosure Act.** The following provision is added to the Franchise Agreement as Section 20.19:

20.19 **ILLINOIS FRANCHISE DISCLOSURE ACT.** Section 41 of the Illinois Franchise Disclosure Act states that any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of the Act or any other law of Illinois is void.

**MARYLAND:** If and to the extent **Maryland** law is the Applicable State Law, the following provisions are incorporated into the Franchise Agreement:

1. **Releases.** The following provision is added to the end of Section 5.2(G) and Section 14.4 of the Franchise Agreement:

Pursuant to COMAR 02.02.08.161, any release required as a condition of renewal and/or assignment/transfer will not apply to claims arising under the Maryland Franchise Registration and Disclosure Law.

2. **Insolvency.** The following is added to the end of Section 16.2(A)(5) of the Franchise Agreement:

The Company and Franchisee acknowledge that certain aspects of this provision might not be enforceable under federal bankruptcy law (11 U.S.C. Sections 101, et. seq.).

3. **Governing Law.** The provisions of Section 20.5 of the Franchise Agreement are hereby deleted and replaced, in their entirety, with the following:

20.5 **Governing Law.** This Agreement takes effect upon its acceptance and execution by the Company in Indiana and shall be interpreted and construed in accordance with Illinois law. Any dispute between the parties, except as stated in this Section 20.5, shall be governed by the laws of the State of Indiana which law shall prevail in any event of conflict of law, except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. 1051 et seq.), the United States Arbitration Act (9 U.S.C. 1 et seq.), or other federal law. The provisions of any law of Illinois regarding franchises (including, without limitation, registration, disclosure, or relationship, and the regulations promulgated thereunder) shall not apply unless such

law's jurisdictional, definitional and other requirements are met independently of, and without reference to, this Section. Notwithstanding the foregoing, if and to the extent required by applicable law, Maryland law will apply to claims arising under the Maryland Franchise Registration and Disclosure Law. The enforceability of the covenants set forth in Article 18 shall be determined in accordance with the law of the state in which the franchised business is located.

4. **Limitation of Claims.** The provisions of Section 20.9 of the Franchise Agreement are hereby supplemented and amended by adding the following to the end of the Section:

However, nothing contained in this Section shall reduce the 3-year statute of limitations afforded Franchisee for bringing a claim under the Maryland Franchise Registration and Disclosure Law.

**MINNESOTA:** If and to the extent **Minnesota** law is the Applicable State Law, the following provisions are incorporated into the Franchise Agreement:

1. **Releases.** The following provision is added to the end of Section 5.2(G) and Section 14.4 of the Franchise Agreement:

Any release required as a condition of renewal and/or assignment/transfer will not apply to the extent prohibited by the Minnesota Franchise Law.

2. **Renewal and Termination.** The following is added to the end of Sections 5.2 and 14.4 of the Franchise Agreement:

To the extent Minnesota law is applicable, the Company will comply with Minn. Stat. Sec. 80C.14, Subds. 3, 4 and 5 which require, except in certain specified cases, that Franchisee be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice of non-renewal of this Agreement.

3. **Punitive Damage Waiver.** The provisions of Section 20.8 of the Franchise Agreement are hereby supplemented and amended by adding the following to the end of the Section:

To the extent required by Minnesota Franchises Law, Section 20.8 of the Franchise Agreement is deleted.

4. **Limitation of Claims.** The provisions of Section 20.9 of the Franchise Agreement are hereby supplemented and amended by adding the following to the end of the Section:



Notwithstanding the foregoing, Minnesota law provides that no action may be commenced under Minn. Stat. Sec. 80C.17 more than 3 years after the cause of action accrues.

5. **Minnesota Law.** Notwithstanding anything to the contrary contained in the Franchise Agreement, Minn. Stat. Sec. 80C.21 and Minn. Ryle 2860.4400J prohibit the Company from requiring you to waive your rights to a jury trial or to waive your rights to any procedure, forum or remedies provided for by the laws of the jurisdiction, or to consent to liquidated damages, termination penalties or judgment notes.

**NEW YORK:** If and to the extent **New York** law is the Applicable State Law, the following provisions are incorporated into the Franchise Agreement:

1. **Assignment by Company.** The following provision is added to the end of Section 14.1 of the Franchise Agreement:

To the extent required by applicable law, no transfer or assignment will be made by the Company except to an assignee who, in Company's good faith judgment, is willing and able to assume Company's obligations under this Agreement.

2. **Releases.** The following provisions are added to the end of Sections 5.2(g) and 14.4 of the Franchise Agreement:

Notwithstanding the foregoing, all rights enjoyed by Franchisee and any causes of action arising in Franchisee's favor from the provisions of Article 33 of the General Business Law of the State of New York and the regulations issued thereunder shall remain in force to the extent required by the non-waiver provisions of GBL Sections 687.4 and 687.5, as amended.

3. **Termination by Franchisee.** Section 16.3 of the Franchise Agreement is hereby supplemented and amended by adding the following additional paragraph to the end of the section:

Franchisee may also terminate this Agreement on any grounds available by law under the provisions of Article 33 of the General Business Law of the State of New York.

4. **Governing Law.** Section 20.5 of the Franchise Agreement is hereby supplemented and amended by adding the following to the end of the section:

This Section shall not be considered a waiver of any right conferred upon Franchisee by the provisions of Article 33 of the General Business Law of the State of New York, as amended, and the regulations issued thereunder.

**NORTH DAKOTA:** If and to the extent **North Dakota** law is the Applicable State Law, the following provisions are incorporated into the Franchise Agreement:

1. **Releases.** The following provision is added to the end of Section 5.2(G) and Section 14.4 of the Franchise Agreement:

Any release required as a condition of renewal and/or assignment/transfer will not apply to the extent prohibited by the North Dakota Franchise Investment Law.

2. **Arbitration.** Section 19.1 of the Franchise Agreement is hereby supplemented and amended by deleting the 4<sup>th</sup> full sentence of the Section and replacing it with the following:

All proceedings will be conducted at a suitable location chosen by the arbitrator in the Indianapolis, Indiana metropolitan area, except to the extent required by the North Dakota Franchise Investment Law (unless such a requirement is preempted by the Federal Arbitration Act).

3. **Governing Law.** Section 20.5 of the Franchise Agreement is hereby supplemented and amended by adding the following to the end of the section:

Notwithstanding the foregoing, if (a) to the extent permitted under the North Dakota Franchise Investment Law, (b) subject to the jurisdictional, definitional and other requirements of such law being satisfied independently of the provisions of, and without reference to, this Section and (c) subject to Franchisee's arbitration obligations, Franchisee may bring an action in North Dakota for claims arising under the North Dakota Franchise Investment Law.

4. **Punitive Damage Waiver.** The provisions of Section 20.8 of the Franchise Agreement are hereby supplemented and amended by adding the following to the end of the Section:

If and to the extent required by North Dakota Franchise Investment Law, Section 20.8 of the Franchise Agreement is deleted.

5. **Limitation of Claims.** The provisions of Section 20.9 of the Franchise Agreement are hereby supplemented and amended by adding the following to the end of the Section:

The statute of limitations under North Dakota law applies with respect to claims arising under the North Dakota Franchise Investment Law.

**RHODE ISLAND:** If and to the extent **Rhode Island** law is the Applicable State Law, the following provisions are incorporated into the Franchise Agreement:

1. **Governing Law.** Section 20.5 of the Franchise Agreement is hereby supplemented and amended by adding the following to the end of the section:

To the extent required by applicable law, Rhode Island law will apply to claims arising under the Rhode Island Franchise Investment Act.

**WASHINGTON:** If and to the extent **Washington** law is the Applicable State Law, the following provisions are incorporated into the Franchise Agreement:

1. **Washington Law.** The following paragraphs are added to the end of the Franchise Agreement:

In recognition of the requirements of the Washington Franchise Investment Protection Act (the "Act") and the rules and regulations promulgated thereunder, the Franchise Agreement shall be amended as follows:

The state of Washington has a statute, RCW 19.100.180 that may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions that may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

In any arbitration involving a franchise purchased in Washington, the arbitration site shall be either in the state of Washington or in a place mutually agreed upon at the time of the arbitration, or as determined by the arbitrator.

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW shall prevail.

A release or waiver of rights executed by a franchisee shall not include rights under the Washington Franchise Investment Protection Act except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those that unreasonably restrict or limit the statute of limitations period for claims under the Act, rights or remedies under the Act such as a right to a jury trial may not be enforceable.

Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.

THUS SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Byrider Franchising, Inc.

Prospective Franchisee

By: \_\_\_\_\_

**EXHIBIT D**  
**TO FRANCHISE AGREEMENT**

**PERSONAL GUARANTY**  
**AND ASSUMPTION OF FRANCHISEE'S OBLIGATIONS**

In consideration of, and as an inducement to, the execution of the above Franchise Agreement (the "Agreement") between Byrider Franchising, Inc. ("Company") and \_\_\_\_\_, dated \_\_\_\_\_, the undersigned ("Guarantor") hereby unconditionally: (1) guarantees to Byrider Franchising, Inc., and its successors and assigns, for the term of the Agreement and thereafter as provided in the Agreement, that the franchisee named therein ("Franchisee") shall punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement; and (2) agrees to be bound by, and liable for the breach of, each and every provision in the Agreement (including any amendments or modifications of the Agreement), both monetary obligations and obligations to take or refrain from taking specific actions or to engage or refrain from engaging in specific activities, including without limitation the non-competition, confidentiality, transfer, and arbitration requirements.

The undersigned waives:

- (1) acceptance and notice of acceptance by Company of the foregoing undertakings;
- (2) notice of demand for payment of any indebtedness or nonperformance of any obligations hereby guaranteed;
- (3) protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligation hereby guaranteed;
- (4) any right to require that an action be brought against Franchisee or any other person as a condition of liability; and
- (5) all rights to payments and claims for reimbursement or subrogation which Guarantor may have against Franchisee arising as a result of Guarantor's execution and performance under the Guaranty;
- (6) all other notices and legal or equitable defenses.

The undersigned consents and agrees that:

- (1) Guarantor's direct and immediate liability under this guaranty shall be joint and several;

(2) Guarantor shall render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses punctually to do so;

(3) such liability shall not be contingent or conditioned upon pursuit by Company of any remedies against Franchisee or any other person; and

(4) such liability shall not be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence which Company may from time to time grant to Franchisee or to any other person, including without limitation the acceptance of any partial payment or performance, or the compromise or release of any claims, none of which shall in any way modify or amend this guaranty, which shall be continuing and irrevocable during the term of the Agreement.

The provisions of Section 19.1 (Arbitration), Section 20.5 (Governing Law), Section 20.6 (Choice of Forum) and Section 20.12 (Attorneys' Fees) of the Agreement are incorporated into this agreement by reference and shall govern this guaranty and any dispute between the undersigned and Company.

IN WITNESS WHEREOF, the undersigned has hereunto executed this Guaranty on the same day and year as the Agreement was executed.

GUARANTOR

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**EXHIBIT E**

**AREA DEVELOPMENT AGREEMENT**

This Area Development Agreement modifies the Franchise Agreement dated \_\_\_\_\_, 20\_\_\_\_ ("Franchise Agreement") entered into between Byrider Franchising, \_\_\_\_\_ Inc. ("Company") and \_\_\_\_\_ ("Franchisee"), as follows:

1. Exclusive Territory. Subject to the provisions of this Area Development Agreement, Franchisee shall have the exclusive right to purchase J.D. Byrider franchises within \_\_\_\_\_ (collectively, the "Exclusive Territory").

2. Development Schedule. Both parties acknowledge and agree that a material provision of this exclusive right is that the following number of franchises must be opened by Franchisee and continuously operating in the Exclusive Territory during the term of this Area Development Agreement in accordance with the following development schedule:

<u>Required Franchises</u>	<u>Opening Date</u>	<u>City Location*</u>
1st franchise:	_____	_____
2nd franchise:	_____	_____
3rd franchise:	_____	_____
4th franchise:	_____	_____
5th franchise:	_____	_____

\*The site for each location must be approved by the Company prior to Franchisee securing each site.

A. Reasonableness of Development Schedule. The Franchisee approves of the foregoing development schedule as being reasonable and viable, and recognizes the development schedule is necessary to insure acceptable J.D. Byrider development of the Exclusive Territory.

B. Failure to Comply with Development Schedule. The Franchisee's failure to comply with the development schedule herein shall constitute a default of this Area Development Agreement by the Franchisee, and, in that event, Franchisee's Exclusive Territory shall revert to the exclusive territory agreed to in Article 4.3 of the Franchise Agreement ("Revised Exclusive Territory"), and the Company may license franchises to other parties or install Company-owned franchises in the initial Exclusive Territory, excluding the Revised Exclusive Territory, without notice to the Franchisee.

C. Initial Franchise Fee. The initial franchise fees are as follows:

- 1. 1st franchise: \$50,000.00
- 2. 2nd franchise: \$35,000.00
- 3. 3rd franchise: \$35,000.00

4.	4th franchise:	\$35,000.00
5.	5th franchise:	<u>\$35,000.00</u>
	Total fee:	\$190,000.00

D. Payment Upon Closing. In conjunction with the execution of this Area Development Agreement, Franchisee shall pay to the Company the total fee of \$120,000.00, which represents the Initial Franchise Fee of \$50,000.00 for the 1st franchise and a Development Fee of \$17,500.00 for each of the 2nd-5th franchises. The Development Fee of \$17,500.00 for each franchise shall be applied toward the Initial Franchise Fee for each of the 2nd-5th franchises, respectively, developed under the terms of this Area Development Agreement. The remaining \$17,500.00 due for each of the 2nd-5th franchises shall be paid upon Franchisee's execution of the franchise agreement for the particular franchise. All fees paid under this Area Development Agreement are nonrefundable.

E. Franchise Agreements. At least sixty (60) days prior to opening the second and each succeeding franchise, Franchisee shall sign a then-current franchise agreement.

Except to the extent specifically modified by this Area Development Agreement, all other terms of the Franchise Agreement shall remain in full force and effect. This Area Development Agreement represents the entire agreement of the parties with respect to the subject matter hereof.

Byrider Franchising, Inc.

\_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
Date



### J.D. Byrider Franchise Directory

Branch locations are enclosed within ( ).

<u>State/Province</u>		<u>Address &amp; Phone</u>	<u>Commencement Date</u>	<u>Owner-Managed</u>
<u>Alabama</u>				
AL102	Wade Hodges	916 S. Quintard Ave. Anniston, AL 36201 256-237-2221	9/14/92	Yes
AL106	Michael/Stephen Locklear	3109 Greensboro Avenue Tuscaloosa, AL 35401 205-349-6280	3/9/04	No
AL109	Russ Larson	2001 Sparkman Drive NW Huntsville, AL 35810 256-852-7422	12/17/09	No
<u>Arizona</u>				
AZ103	Wright/Hirst	1455 N. Arizona Avenue Chandler, AZ 85225 480-821-8833	4/10/01	Yes
<u>California</u>				
CA101	Don Groppetti	333 S. Burke Visalia, CA 93279 559-622-0211	7/15/07	No
<u>Colorado</u>				
CO105	Russ Darrow, Jr.	155 N. Academy Blvd. Colorado Springs, CO 80909 719-955-4800	8/31/07	No
<u>Florida</u>				
FL112	Robert Bartolini	2626 S. Federal Hwy. Delray Beach, FL 33483 561-272-2989	4/9/98	Yes
FL118	Jim Thompson/ Jim Kagiliery	8864 Atlantic Blvd. Jacksonville, FL 32211 904-721-9000	3/1/00	Yes
FL127	Ed & Trevor Wiggins	[to be determined]	1/23/01	No
FL128	Ed & Trevor Wiggins	[to be determined]	1/23/01	No

<u>State/Province</u>		<u>Address &amp; Phone</u>	<u>Commencement Date</u>	<u>Owner-Managed</u>
FL129	Ed & Trevor Wiggins	17220 South Dixie Highway Miami, FL 33157 305-256-7777	1/23/01	No
FL130	Ed & Trevor Wiggins	[to be determined]	5/16/01	No
FL131	Ed & Trevor Wiggins	[to be determined]	5/16/01	No
FL132	Ed & Trevor Wiggins	[to be determined]	5/16/01	No
FL139	Jim Thompson	1285 Cassat Avenue Jacksonville, FL 32205 904-425-3000	12/12/01	Yes
FL150	Jim Thompson	3105 W. Tennessee St. Tallahassee, FL 32304 850-205-5800	6/30/04	No
FL151	Jim Thompson	7739 Blanding Blvd. Jacksonville, FL 32210 904-908-4403	10/1/04	No
FL152	Jim Thompson	2640 US 1 South St. Augustine, FL 32086 904-827-0335	12/19/06	No
FL153	M. Rouen	[to be determined]	1/11/08	No
<u>Georgia</u>				
GA102	Jim Thompson	1801 Gordon Highway Augusta, GA 30904 706-736-5543	13/3/05	No
GA103	G. Maier	2237 E. Victory Drive Savannah, GA 31404 912-354-2331	5/18/06	No
GAC14	Company	5585 Peachtree Ind. Blvd. Chamblee, GA 30341 770-407-4000	3/1/02	No
GAC16	Company	1215 Cobb Parkway South Marietta, GA 30060 678-934-0200	10/1/04	No

<u>State/Province</u>		<u>Address &amp; Phone</u>	<u>Commencement Date</u>	<u>Owner-Managed</u>
<u>Illinois</u>				
IL105	Kevin Sullivan	441 W. Marketview Drive Champaign, IL 61822 217-355-3100	7/23/91	No
IL113	David Crow	[to be determined]	11/20/00	Yes
IL114	John Dralle	[to be determined]	10/1/01	Yes
IL115	Thomas Burgstone	2323 W. Jefferson Street Joliet, IL 60435 815-207-5500	7/29/02	Yes
IL116	Kevin Sullivan	1709 S. Veteran's Parkway Bloomington, IL 61701 309-665-5000	9/17/02	Yes
IL117	Bob Brady	2190 E. Pershing Road Decatur, IL 62526 217-877-0070	12/18/02	Yes
IL118	B. Johnson	4101 N. Belt West Belleville, IL 62226 618-257-0000	9/20/05	Yes
IL119	B. Brady/S. Gensler	909 S. Dirksen Parkway Springfield, IL 62703 217-522-1801	5/17/06	No
IL120	A. Zeigler	2311 Ogden Ave. Downer's Grove, IL 60515 630-598-0095	7/5/07	No
IL121	M. Burgstone	800 North Avenue Glendale Heights, IL 60139 630-403-3800	10/22/08	No
IL122	P. Bachrodt	[to be determined]	8/26/09	No
<u>Indiana</u>				
INCO2	Company	1703 US 31 S. Greenwood, IN 46143 317-865-8200	5/15/94	Yes
INCO3	Company	1525 N. Shadeland Ave. Indianapolis, IN 46219 317-354-4444	1/10/96	Yes

<u>State/Province</u>		<u>Address &amp; Phone</u>	<u>Commencement Date</u>	<u>Owner-Managed</u>
INCO5	Company	575 Sagamore Parkway S. Lafayette, IN 47905 765-449-8200	11/26/96	Yes
INCO7	Company	5050 West 38 <sup>th</sup> Street Indianapolis, IN 46254 317-347-9000	6/1/98	Yes
INC10	Company	3521 Grape Road Mishawaka, IN 46545 574-252-1000	12/29/99	Yes
IN115	James Hadley	6619 Dixie Highway Florence, KY 41042 859-746-0043	12/15/92	Yes
IN116	Rich Stutts	506 E. McGalliard Muncie, IN 47303 765-286-8000	9/23/93	Yes
(IN116A)	Rich Stutts	1061 Chester Blvd. Richmond, IN 47374 765-962-4171	12/20/94	Yes
(IN116B)	Rich Stutts	311 S. Scatterfield Rd. Anderson, IN 46012 765-643-6069	12/20/94	Yes
(IN116C)	Rich Stutts	2425 West 3 <sup>rd</sup> Street Bloomington, IN 47404 812-333-1776	1/24/96	Yes
(IN116D)	Rich Stutts	2645 N. National Rd. Columbus, IN 47201 812-348-1255	8/27/97	Yes
(IN116H)	Rich Stutts	2116 N. 1 <sup>st</sup> Avenue Evansville, IN 47710 812-426-2500	12/28/98	Yes
IN117	Jim Hadley	585 E. Clifty Dr. Madison, IN 47250 812-273-4847	11/1/96	Yes
IN122	R. Swierbut	6349 Broadway Ave. Merrillville, IN 46410 219-985-6621	8/14/08	No

<u>State/Province</u>		<u>Address &amp; Phone</u>	<u>Commencement Date</u>	<u>Owner-Managed</u>
<u>Iowa</u>				
IA104	Russ Larson	125 S. Roosevelt Ave. Burlington, IA 52601 319-754-4220	1/15/95	Yes
IA109	Russ Larson	925 W. Kimberly Rd. Davenport, IA 52806 563-344-9222	1/31/05	Yes
IA110	Russ Larson	2426 SE 14 <sup>th</sup> Street Des Moines, IA 50320 515-697-7073	7/2/08	Yes
IA111	Russ Larson	3837 First Ave. SE Cedar Rapids, IA 52406 319-866-7179	8/19/08	Yes
<u>Kansas</u>				
KS103	Rich Stutts	7722 Metcalf Ave. Overland Park, KS 66204 913-220-2780	1/17/07	No.
<u>Kentucky</u>				
KY103	Jeff Anderson	2214 US 41N Henderson, KY 42420 270-827-3681	8/23/01	No
KY104	Jeff Anderson	1411 W. 4 <sup>th</sup> St. Owensboro, KY 42301 270-684-7669	1/14/08	No
<u>Louisiana</u>				
LA105	David Harris	11522 Florida Blvd. Baton Rouge, LA 70815 225-329-0420	9/6/91	Yes
LA108	Ronnie Ward	1107 Oliver Rd. Monroe, LA 71201 318-340-9300	1/28/99	Yes
LA109	R. Boyce	1400 Westbank Expressway Harvey, LA 70058 504-304-4374	12/16/08	No

<u>State/Province</u>		<u>Address &amp; Phone</u>	<u>Commencement Date</u>	<u>Owner-Managed</u>
<u>Maryland</u>				
MD101	Andrew Dixon	[to be determined]	4/10/00	No
MD102	Ward Griffith	8 8 <sup>th</sup> Avenue NW Glen Burnie, MD 21061 410-787-1005	12/26/00	No
<u>Massachusetts</u>				
MA102	Gerard Vachon	635 Washington Street S. Attleboro, MA 02703 508-761-1111	10/29/99	Yes
MA103	Edward J. Wiggins	1675 Main Street Brockton, MA 02301 407-781-8500	11/5/99	No
MA104	Edward J. Wiggins	331 State Rd. (Route 6) Dartmouth, MA 02747 508-992-0000	4/3/02	No
MA105	Edward J. Wiggins	1090 Boston Rd. Springfield, MA 01119 413-783-9600	8/21/03	No
<u>Michigan</u>				
MI105	Harold Zeigler	3227 S. Westnedge Ave. Kalamazoo, MI 49008 269-375-8778	6/28/00	No
MI106	Swierbut & Swierbut	3692 Airline Road Muskegon, MI 49444 231-739-5500	2/8/01	Yes
MI108	Harold Zeigler	4811 South Cedar St. Lansing, MI 48910 517-882-3690	1/24/03	No
MI109	J. Marsh	1661 S. Garfield Ave. Traverse City, MI 49686 231-932-7900	10/2/08	No
MI110	R. Swierbut	3462 Division Ave. S. Wyoming, MI 49548 616-241-5400	5/15/09	No

<u>State/Province</u>		<u>Address &amp; Phone</u>	<u>Commencement Date</u>	<u>Owner-Managed</u>
<u>Missouri</u>				
MO104	Larry Weaver	1316 Highway 76 West Branson, MO 65616 417-336-5300	10/4/00	No
MO106	R. Larson	1905 Range Line St. Columbia, MO 65202 573-817-1700	4/7/09	No
<u>Mississippi</u>				
MS104	Barry Biggers	2521 HWY. 80E Pearl, MS 39208 601-939-7151	1/29/92	No
<u>Nevada</u>				
NV101	Vince Keller	3024 Fremont Street Las Vegas, NV 89104 702-933-4400	5/9/01	Yes
<u>New Jersey</u>				
NJ103	Henry Marter	342 White Horse Pike Clementon, NJ 08021 856-309-9400	8/2/02	Yes
<u>New Mexico</u>				
NM101	Gary Tillery	6008 Central Avenue S.E. Albuquerque, NM 87108 505-265-5626	3/12/98	Yes
<u>North Carolina</u>				
NC104	Tony Terry	975 Highway 66 South Kernersville, NC 27284 336-423-5990	5/12/06	No
NC105	Vince Keller	7401 South Boulevard Charlotte, NC 28273 704-496-7720	9/29/06	No
NC106	L./C. Thomas	5101 New Bern Avenue Raleigh, NC 27610 919-268-4790	4/4/07	No

<u>State/Province</u>		<u>Address &amp; Phone</u>	<u>Commencement Date</u>	<u>Owner-Managed</u>
<u>Ohio</u>				
OH105	Robert Fairchild	1365 West 117 <sup>th</sup> St. Cleveland, OH 44107 216-521-4300	12/19/92	No
OH112	Robert Palmer	7871 Market Street Boardman, OH 44512 330-758-5800	3/28/97	Yes
OH119	Rob Palmer	4468 Youngstown Rd. SE Warren, OH 44484 330-369-3300	6/22/98	Yes
OH122	Tony Marcantonio	444 West 3 <sup>rd</sup> Street Dover, OH 44622 330-343-4900	1/26/99	Yes
OH127	Derre Buike	5941 West Central Ave. Toledo, OH 43615 419-842-1655	5/1/00	No
OH128	Billy Rowland	200 Greene Street Marietta, OH 45750 740-373-7051	8/29/00	No
OH130	Roy Lewis	777 Canton Rd. Akron, OH 44312 330-733-8828	1/29/01	Yes
OH131	Tony Marcantonio	67701 Mall Road Saint Clairsville, OH 43950 740-526-0000	4/16/01	Yes
OH132	Milstein/Ange	20941 Euclid Ave. Euclid, OH 44117 216-486-6400	9/30/01	Yes
OH133	Milstein/Ange	[to be determined]	9/4/02	Yes
OH134	Derre Buike	1375 ½ Conant Street Maumee, OH 43537 419-893-2334	12/16/02	Yes



<u>State/Province</u>		<u>Address &amp; Phone</u>	<u>Commencement Date</u>	<u>Owner-Managed</u>
OH135	Derre Buike	[to be determined]	12/16/02	Yes
OH136	David Nikolson	1190 Main Street Cuyahoga Falls, OH 44221 330-926-7000	12/24/02	No
OH140	Roy Lewis	1810 W. 4 <sup>th</sup> St. Ontario, OH 44906 419-529-2515	12/2/04	No
OH142	Chris McPhie	4536 Cleveland Road Wooster, OH 44691 330-345-4565	5/17/08	No
OH143	Derre Buike	7550 Leavitt Rd. Amherst, OH 44001 440-988-3000	8/15/08	Yes
OH144	Derre Buike	5250 Brookpark Road Parma, OH 44134 216-398-7000	12/15/08	Yes
OH145	Derre Buike	90 Broadway Bedford, OH 44146 440-658-1100	12/15/08	Yes
OH146	C. Simon	3420 North Ridge East Ashtabula, OH 44004 440-992-3900	2/28/09	No
OH147	A. Marcantonio	2122 W. State Street Alliance, OH 44601 330-829-9001	1/14/10	No
OH148	C. McPhie	3000 W. Tuscarawas St. Canton, OH 44708 330-458-0000	12/31/09	No
OH149	C. McPhie	[to be determined])	12/31/09	No
OHC06	Company	2144 Elida Road Lima, OH 45805 419-222-3980	12/10/97	Yes
OHC09	Company	2886 S. Hamilton Rd. Columbus, OH 43232 614-575-1177	9/23/98	Yes

<u>State/Province</u>		<u>Address &amp; Phone</u>	<u>Commencement Date</u>	<u>Owner-Managed</u>
OHC11	Company	2646 Morse Road Columbus, OH 43231 614-478-1600	8/10/00	Yes
OHC12	Company	5515 Dixie Highway Fairfield, OH 45014 513-939-2700	9/11/00	Yes
OHC13	Company	9797 Colerain Ave. Cincinnati, OH 45251 513-923-3999	9/25/00	Yes
OHC18	Company	8581 Beechmont Ave. Cincinnati, OH 45255 513-407-4111	5/21/09	Yes
<u>Pennsylvania</u>				
PA101	Leonard Tagliavia	110 N. Courtland St. E. Stroudsburg, PA 18301 570-426-1350	3/10/99	Yes
PA103	Bob Fairchild	4125 Peach St. Erie, PA 16508 814-868-0700	9/15/99	Yes
PA104	Robert J. Palmer	3500 East State St. Hermitage, PA 16148 724-342-7500	12/17/99	Yes
PA108	Randall Barson	601 State Avenue Emmaus, PA 18049 610-965-1500	5/18/01	Yes
PA110	Lenny Tagliavia	2460 Freemansburg Ave. Easton, PA 18040 484-548-6300	7/30/05	Yes
PA111	Randall Barson	2261 Lancaster Pike Reading, PA 19607 610-777-3500	9/7/05	Yes
PA112	Robert J. Palmer	1561 W. Liberty Ave. Pittsburgh, PA 15226 412-563-2888	2/27/06	No
PA113	Robert J. Palmer	7200 McKnight Rd. Pittsburgh, PA 15237 412-364-1112	12/22/06	No

<u>State/Province</u>		<u>Address &amp; Phone</u>	<u>Commencement Date</u>	<u>Owner-Managed</u>
PA114	Robert J. Palmer	1615 Golden Mile Highway Monroeville, PA 15146 724-733-1400	4/17/09	No
<u>Rhode Island</u>				
RI101	Edward J. Wiggins	615 Reservoir Avenue Cranston, RI 02910 401-781-8500	6/14/96	Yes
RI102	Edward J. Wiggins	307 Broad Street Providence, RI 02907 401-273-1222	8/3/99	Yes
<u>South Carolina</u>				
SC103	Tim Brown	1030 N. Church St. Spartanburg, SC 29303 864-596-4567	6/16/92	No
SC105	John Gandolfo	3815 W. Beltline Blvd. Columbia, SC 29204 803-748-9331	11/30/98	Yes
SC114	J. Gandolfo	7053 Rivers Ave. North Charleston, SC 29406 843-614-8200	7/24/08	Yes
<u>Tennessee</u>				
TN106	Vincent Keller	8413 Kingston Pike Knoxville, TN 37923 865-684-2277	6/16/04	Yes
TN107	Chris Hadley	1525 Gallatin Pike North Madison, TN 37115 615-860-3838	12/22/05	No
<u>Texas</u>				
TX109	James Day	3216 SW Military Drive San Antonio, TX 78211 210-927-1700	5/21/01	Yes
TX112	Mark Bedgood	1007 West Marshall Longview, TX 75604 903-553-2974	3/26/02	Yes

<u>State/Province</u>		<u>Address &amp; Phone</u>	<u>Commencement Date</u>	<u>Owner-Managed</u>
TX114	Mark Bedgood	3908 S SW Loop 323 Tyler, TX 75701 903-509-3100	11/9/04	No
TX115	James Day	11150 IH35 N San Antonio, TX 78223 210-651-1191	2/4/05	No
TX116	James Day	6226 Bandera Road Leon Valley, TX 78238 210-523-0900	4/21/06	No
TX117	J. Locklear	8840 Camp Bowie W. Blvd. Ft. Worth, TX 76116 817-632-2900	9/30/06	No
TX118	E. Kissick	909 South Beckley Drive Desoto, TX 75115 469-643-2233	6/4/07	No
TX119	R. Daniels-Kolin	[to be determined]	6/11/08	No
<u>Virginia</u>				
VA102	Gary Duncan	3141 Peters Creek Rd. Roanoke, VA 24019 540-527-1900	1/7/99	No
VA103	Tony Terry	2828 Candler's Mtn. Rd. Lynchburg, VA 24502 434-455-6502	6/24/00	No
VA106	S. Ward	1467 Front Royal Pike Winchester, VA 22602 540-662-0006	12/20/06	No
VA107	Hartman/Rush, Jr.	3411 South Main Street Harrisonburg, VA 22801 540-437-1444	4/30/07	No
<u>West Virginia</u>				
WV104	Billy Rowland	1208 Blizzard Dr. Parkersburg, WV 26101 304-428-6221	1/22/03	No

<u>State/Province</u>		<u>Address &amp; Phone</u>	<u>Commencement Date</u>	<u>Owner-Managed</u>
WV105	Billy Rowland	3129 MacCorkle Ave. SW South Charleston, WV 25303 304-925-5656	2/10/05	No
WV106	Billy Rowland	Old Route 50 East Clarksburg, WV 26301 304-624-9898	6/30/06	No
<u>Wisconsin</u>				
WI101	Russ Darrow, Jr.	7776 N 76 <sup>th</sup> Street Milwaukee, WI 53223 414-371-4040	9/23/96	No
WI102	Russ Darrow, Jr.	4810 S. 27 <sup>th</sup> St. Milwaukee, WI 53221 414-325-2000	3/10/98	No
WI104	Russ Darrow, Jr.	2301 W. College Avenue Appleton, WI 54914 920-749-7979	4/20/00	No
WI107	Russ Darrow, Jr.	6507 Odana Road Madison, WI 53719 608-663-1213	11/20/00	No

**EXHIBIT E**  
**TO FRANCHISE AGREEMENT**

**J.D. BYRIDER SOFTWARE SERVICES AND USER AGREEMENT**

This Software Services and User Agreement (“Agreement”) is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between BYRIDER FRANCHISING, INC., having its principal place of business at 12802 Hamilton Crossing Blvd., Carmel, Indiana 46032 (hereinafter “Licensor” or “Company”) and Franchisee, as identified in the Franchise Agreement between Byrider Franchising, Inc., and Franchisee dated \_\_\_\_\_ (together with its agents and successors, collectively, hereinafter “Licensee”), and is made part of the Franchise Agreement. Capitalized terms used but not defined in this Agreement shall have the meanings ascribed to them in the Franchise Agreement.

1. Licensed System. Licensor has developed certain computer software programs relating to “buy-here-pay-here” automobile sales and collection management systems, including programs which allow generation of specific retail installment sales and security contracts from input data and monitoring of receivables and collection productivity by Licensee, for use in the automobile sales business (hereinafter referred to as “Licensed Software”). The Licensed Software includes components owned and licensed directly by Licensor (“Licensor Software”) and components provided from third parties and sublicensed by Licensor (“Third Party Software”). Licensor has also developed documentation associated with these programs (including end-user manuals) to assist in utilization and understanding of that software (hereinafter referred to as “Licensed Documentation”). The server portion of the Licensed Software will be hosted by Licensor from Licensor’s data processing facilities (the portion of those facilities that host the Licensed Software is hereinafter referred to as the “Hosting Facility”). Licensor has developed infrastructure standards (“Infrastructure Standards”) that permit approved access to the Licensed System. The Hosting Facility, the Licensed Software, the Infrastructure Standards and Licensed Documentation, together with any modifications, translations, updates, versions, enhancements or improvements to the software programs and/or documentation provided by Licensor to Licensee are hereinafter referred to as the “Licensed System.” Licensor agrees to provide Licensee with one (1) copy of the Licensed Software and the Licensed Documentation and all updates or revisions to the Licensed Software and the Licensed Documentation.

2. Services. In accordance with the terms and conditions of this Agreement, Licensor shall provide Licensee with usage, login, and access to self-management of security controls to the Licensed System (all of which constitute and form part of the Confidential Information) for the purpose of providing to Licensee data processing and other services related to the “buy-here-pay-here” automobile sales and collection management systems, particularly generation of specific retail installment sales and security contracts from input data and monitoring of receivables and collection productivity by Licensee (hereinafter referred to as “Services”). Licensor shall have the right to suspend or limit, in whole or in part, Licensee’s access to the Services upon ten (10) days written notice to Licensee if any amounts due Licensor are more than thirty (30) days past due or as otherwise provided in the Franchise Agreement.

3. License. Subject to all the terms and conditions of this Agreement and the Franchise Agreement, Licensor hereby grants to Licensee, and Licensee hereby accepts, a non-exclusive, indivisible, non-transferable license to access and use the Licensed System in a manner consistent with the terms of this Agreement. Such license is provided for the sole purpose of allowing Licensee access to the functions of the Licensed System necessary to obtain the Services for the sole use of Licensee's automobile sales business pursuant to and in accordance with the Franchise Agreement. It is the responsibility of the Licensee alone to ensure that the Licensed System fulfills the individual requirements and goals of the Licensee. This license extends only to use for Licensee's own internal automobile sales business purposes and not for any direct or indirect benefit of third parties. Licensee agrees to access the Licensed System only by means of the equipment and procedures substantially similar to those designated in **Appendix A** attached hereto and incorporated herein by reference. Licensee agrees to use the Licensed System solely for the purposes of business initiated and conducted at the location specified in **Appendix C**, and additional locations may not be added without Licensor's approval. Licensee shall not use or access the Licensed System in connection with the performance of data processing services or as a service bureau for any third person. Licensee further agrees that it shall not use the Licensed System in any manner that is contrary to any law or regulation of the United States or any state or country where Licensee is located. Licensee shall, at all times, use the Licensed System as directed by the Licensor from time to time. The components of the Licensed System may be changed from time to time at the Licensor's sole discretion.

4. Transmission of Data and Use of Services. Except as may be provided in this Agreement, Licensee shall be solely responsible for communications and transmission of any and all data and information of any kind between Licensee and the Licensed System (hereinafter "Customer Data"). Licensee assumes exclusive responsibility for the consequences of any instructions Licensee may give Licensor, for Licensee's failure to properly access the Licensed System in the manner prescribed by Licensor, and for Licensee's failure to supply accurate, timely, and/or complete input information. All network connectivity to and from the Licensed System is the responsibility of the Licensee and must be by means of secured network connections and controlled devices. Network configuration and access, anti-virus tools, firewalls, VPN tools, wireless access points, and possibly other means must be installed, maintained, and activated by the Licensee as directed by the Licensor. Licensee is responsible for choosing its network carrier, associated costs, and service levels. Licensor reserves the right to immediately suspend Licensee's network connectivity and use of the Licensed System if the Licensor believes in good faith that the Licensee poses a threat to the Licensed System or Licensor due to viruses, worms, hacking, or any other situation that presents reasonable dangers. Upon a showing that Licensee's use no longer poses such a threat, then Licensor shall reactivate Licensee's use of the Licensed System.

5. Undertakings of Licensor. In accordance with the terms of this Agreement, Licensor agrees to:

- a) Make its commercially reasonable efforts to maintain the Licensed System in operation twenty-four (24) hours a day, seven (7) days a week except for periods of scheduled maintenance;

- b) Use its commercially reasonable efforts to provide the Services in a manner that protects information transmitted by Licensor from unauthorized interception, modification, or replication; and
- c) Provide computer hardware and support for such hardware as detailed in this Agreement.

6. Retention of Title. Licensee agrees that all title, ownership, intellectual property rights, and similar rights, in and of the Licensed Software and Licensed Documentation and all copies in whole or in part thereof shall at all times remain with Licensor. Such intellectual property rights include, but are not limited to, patent, trademark, copyright, and/or trade secret rights. Licensee shall keep the Licensed Software and Licensed Documentation free and clear of all claims, liens, and encumbrances. Any act of Licensee purporting to create a claim, lien, or encumbrance on the Licensed Software and Licensed Documentation shall be void. Licensee further hereby acknowledges that the Licensed Software contains proprietary trade secrets and know-how, including the "look and feel" of the Licensed Software screen displays and the Licensed Software manner of operation. Licensee agrees to protect such proprietary information, trade secrets, and know how by complying with the confidentiality provisions of this Agreement.

7. Fees. Licensee shall pay to Licensor the amount specified in **Appendix B**, attached hereto and incorporated herein by reference, in accordance with the terms specified in **Appendix B**. The Initial Fee shall be paid within thirty (30) days of execution of this Agreement. The Conversion Fee shall be paid within thirty (30) days of the initial usage of the Licensed System. The Monthly Usage Fee shall be paid by the 15<sup>th</sup> of each month for the previous month's usage. The Custom Support Fee shall be paid within thirty (30) days of invoicing. The Monthly Usage Fee and Custom Support Fee are subject to an increase or decrease at the discretion of the Licensor. An increase per fee shall not occur more than once per calendar year and is subject to at least ninety (90) days advance notice to the Licensee.

8. Term. This Agreement shall remain in full force and effect during the term of the Franchise Agreement and, unless sooner terminated as provided herein, shall expire or terminate concurrently with the expiration or termination of the Franchise Agreement.

9. Customer Data. Licensee shall remain the sole and exclusive owner of all its Customer Data and other confidential information of Licensee, regardless of whether such data is maintained on Licensor's or Licensee's computer systems, magnetic or other media, or any other storage or processing device. Licensor shall be permitted to view, and copy the Customer Data, and grant third party access to Customer Data at the discretion of Licensor for the purposes of analysis and maintaining the Licensed System. All such Customer Data and other confidential information of Licensee shall be subject to examination by the appropriate auditors to the same extent as if such information were on Licensee's premises. Upon Licensee's request, and at Licensee's expense, Licensor shall provide promptly to Licensee copies of any and all Customer Data on media designated by Licensee. Also upon Licensee's request, authorized personnel of Licensee shall be permitted access to the Licensor facilities utilized in providing the Services during normal business hours subject to any reasonable security procedures or other restrictions in effect at Licensor's facilities. Notwithstanding the foregoing, Licensor may



provide access to the Customer Data, without consent of Licensee, in compliance with the order or judgment of a court of competent jurisdiction. Licensor will process items and data and perform the services under this Agreement on the basis of information furnished by Licensee. Licensor shall be entitled to rely upon any such data, information, or instructions as provided by Licensee. If any error results from incorrect input supplied by Licensee, Licensee shall be solely responsible for discovering and reporting such error and supplying data necessary to correct such error to Licensor. In no event shall Licensor be liable for any direct or indirect damages of any type resulting from data furnished by Licensee. Licensor may maintain backup Customer Data in perpetuity following the termination of this Agreement.

10. Anonymous Data. Licensee hereby grants an irrevocable non-exclusive license to Licensor and its agents, successors, and assigns to use, compile, distribute, market, sell and sublicense statistical analyses, information, data and reports utilizing data aggregated or obtained from Customer Data during the term of this Agreement (“Anonymous Data”). Licensor shall cause the Anonymous Data to be created in a manner which does not include information that personally identifies Licensee or any of its customers. Licensor’s use of Anonymous Data shall only be to the extent allowable by law. For example, Licensor shall be permitted to provide Licensee’s Customer Data to service bureaus and other parties who aggregate data for reporting and analysis purposes if the Licensor provides substantially similar Customer Data from the Franchisees of the Licensor for the same purpose. Examples of parties would include Experian, Equifax, Transunion, Teletrack, Carfax, and Wonderlic.

11. Confidential Information. Licensee acknowledges that the Licensed Software and Licensed Documentation include proprietary information containing trade secrets and copyrighted materials. Licensee shall not make the Licensed Software or Licensed Documentation or any portion thereof available by assignment, sublicense, transfer, disclosure or any other means for copying or use by any person, firm, or corporation not a party to this Agreement other than its employees, agents and successors. Licensee acknowledges that any unauthorized disclosure to or use by third parties may cause immediate and irreparable harm and significant injury to Licensor that may be difficult to ascertain. Accordingly, Licensee agrees that Licensor will have the right to obtain immediate injunctive relief to enforce obligations under this Agreement, upon breach of such obligations or threat of such breach, in addition to any other remedies to which it may be entitled.

“Confidential Information” for purposes of this Agreement shall mean and include all information not in the public domain that relates to, is embodied in, or associated with Licensor, the Licensed System and the methods of operation and nature of the foregoing, including, but not limited to, all trade secrets, know-how, engineering documents, designs and procedures, manuals, software, program listings, data file printouts, screen displays, technical data, research, or third-party confidential information disclosed to Licensor; and including the nature and existence of any of the foregoing. Confidential Information includes oral, intangible, and/or recorded forms of disclosure as well as written or tangible forms of disclosure and shall specifically include all information that if, due to its character or nature, a reasonable person in a like position and under like circumstances as Licensee would treat as confidential. Confidential Information, however, does not include information that: 1) is now or subsequently becomes generally available to the public through no fault or breach on the part of Licensee; 2) Licensee

can demonstrate to have had rightfully in its possession prior to disclosure to Licensee by Licensor; 3) is independently developed by Licensee without the use of any Confidential Information; or 4) Licensee rightfully obtains from a third party who has the right to transfer or disclose it.

Licensee will not disclose, publish, or disseminate Confidential Information to anyone other than (a) those of its employees and contractors with a demonstrable "need to know" who have a binding, written, confidentiality obligation to Licensee that protect such Confidential Information against disclosure, or (b) other employees and contractors working for Licensee that have entered into a Non-Disclosure Agreement with Licensor. Licensee shall not, and shall not attempt to, decompile, reverse engineer, disassemble, modify, network, rent, lease, or loan the Confidential Information without prior written authorization of Licensor. Licensee shall not remove, overprint, or deface any notice of copyright, patent, trademark, logo, legend, or other notices of ownership from any originals or copies of Confidential Information. Licensee further agrees not to introduce any virus, worm, Trojan horse, bomb, sniffer, or other malicious computer code or process into the Licensed System. Licensee agrees and consents that the mingling of the Confidential Information with any information of Licensee will not affect the Confidential Information status of such information. Licensee further agrees to take reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of Confidential Information. Licensee shall immediately notify Licensor of any actual or suspected unauthorized disclosure or use of the Confidential Information that comes to Licensee's attention, and shall take all action that Licensor reasonably requests to prevent any further unauthorized use or disclosure thereof. Licensee shall not access nor attempt to gain access to data other than Licensee's own Customer Data.

Licensee shall continue to be bound by these non-disclosure provisions after termination of this Agreement until the expiration of Licensor's intellectual property rights and the public disclosure of Licensor's trade secrets (through no fault of Licensee) in the Licensed System. The license granted under this Agreement is expressly conditioned upon Licensee's continuous and complete compliance with the provisions of this Section 11.

12. Copying Prohibited. Licensee shall not make any copies of the Licensed Software in whole or part. Licensee shall not make any copies of the Licensed Documentation in whole or part [beyond the number of copies necessary for its use of the License System]. In no event shall Licensee make any copy of the Licensed Documentation available to any person other than one of its employees or agents who are bound to maintain that information in confidence and have been instructed not to make the copy available to any person other than an employee or agent of Licensee who is similarly bound.

13. Notice Marking. Licensee shall label all copies of the Licensed Documentation or separately identifiable portions thereof made by Licensee as follows:

© Byrider Franchising, Inc. All rights reserved. Copies in whole or part may only be made by express written permission of the copyright owner.

Such copyright notices shall be prominently displayed so as to be readily noticed by anyone having access to copies of the Licensed System or any portions thereof. Licensee shall not remove, hide, or disable any of the Licensor's copyright notices on the Licensed System. Except as expressly provided in Section 3, no rights are granted under this Agreement either expressed or implied with respect to any copyrights.

14. Security and Disaster Recovery. Licensor agrees to take commercially reasonable efforts to store, or cause to be stored, in a secure location remote from Licensor, additional copies of all records and Customer Data and any Licensor resources required to provide the Services, and additional tapes or disks necessary to reproduce all such records and Customer Data, as well as source or object code of all software included in the Licensed System on a reasonable periodic basis. Licensee acknowledges that such backup information will not be entirely current. Licensor shall establish and maintain safeguards against the destruction, loss or damage to or alteration of Customer Data in its possession which are no less rigorous than those maintained by Licensor for its own data and software, and use reasonable care in accordance with standard commercial practices to minimize the likelihood of any damage to or loss of such Customer Data. Licensor further agrees to maintain a Disaster Recovery Plan. "Disaster" shall mean any unplanned interruption of operations that materially affect the ability of Licensor to provide Services beyond a reasonable period of interrupted service. Such Plan shall include means for providing alternate electrical power to Licensor computer systems and for restoration of backed-up data. At all times, Licensee shall provide and maintain a secure network connection to the Licensed System. At all times, Licensee shall cause its personnel to access the Licensed System in a reasonably secure work environment to prevent any unauthorized use or access to the Licensed System.

15. Limited Warranty. Licensor warrants that the Licensor's Software will substantially conform to Licensor's current published documentation when delivered to Licensee. **The Third Party Software is not warranted by Licensor.** In the event that the Licensee provides Licensor with written documentation within ninety (90) days from the first use of the Licensed Software by the Licensee verifying that there is a non-conformity in the Licensed Software which significantly impairs a vital business function not caused by defects in Third Party Software or misuse by Licensee, and Licensee is in full compliance with the terms of this Agreement, then Licensor, at Licensor's election, either 1) shall correct the non-conformity free of charge, or 2) shall provide an alternative procedure or "work around" whereby the non-conformity will not have a significant effect on the Licensee's use of the Licensed Software. Should such non-conformities be due solely to defects in Third Party Software, Licensor shall have no liability to Licensee for such defect and Licensee's sole remedy for such defect shall be from the Third Party. Licensee shall provide Licensor, at no charge, sufficient access to, support, and test time on Licensee's equipment to identify the non-conformity, certify that the non-conformity results from error of the Licensed Software, and certify whether or not the non-conformity has been remedied. Licensee agrees to establish adequate back up plans, including for personnel to aid in non-conformity diagnosis by Licensor and to assist in the repair of defects by Licensor, in the event of non-conformities, errors, defects or other malfunctions in the Licensed Software. Licensee shall also implement sufficient procedures to satisfy its own requirements for security and accuracy of input and output. Licensor does not guarantee any retroactive

compatibility between new versions, releases, fixes, enhancements, or other modifications to the Licensed System.

THE FOREGOING WARRANTY IS NULL AND VOID IF THE ALLEGED NON-CONFORMITIES ARE PROXIMATELY CAUSED BY ANY OF THE FOLLOWING:

A. ANY UNAUTHORIZED MODIFICATION OR USE OF THE LICENSED SYSTEM BY LICENSEE,

B. LICENSEE'S FAILURE TO PERFORM A REQUIRED DUTY OR DUTIES, OR

C. LICENSEE PERFORMING A REQUIRED DUTY IN AN IMPROPER MANNER.

16. Licensed System Maintenance and Support.

a. Licensor may make corrections, updates, and modifications of the Licensed System ("enhancements") from time to time. Licensor shall make the enhancements to the Licensed System available to Licensee without additional charge except for any enhancements which constitute Third Party Software, or changes to Infrastructure Standards. Licensor will provide Licensee any enhancements which constitute Third Party Software or Infrastructure Standards for an amount equal to Licensor's cost therefor. Further, Licensor may or may not, at its option, repair or replace any verifiable non-conformities in the Licensed Software programs such that these programs conform to the documentation of the Licensed System and provide those repairs or replacements to Licensee without additional charge. Also, Licensor will provide consultation by telephone to assist Licensee to resolve difficulties of Licensee related to the use of the Licensed Software. The maintenance services contemplated by this paragraph will be provided generally from 9 a.m. to 5 p.m., Eastern Daylight Time, Monday through Friday, excluding holidays.

b. Licensee shall designate an appropriate and knowledgeable person to serve as Licensee's liaison with Licensor and through whom all contacts and questions shall be presented to Licensor. Licensor shall not be obligated to provide information or answer inquiries from Licensee except through this liaison person.

c. If Licensee requests on-site assistance from Licensor, and Licensor agrees that such on-site assistance is reasonably necessary, Licensee will additionally pay Licensor's travel, the then current Custom Support Fee charged by Licensor, and other related business expenses actually incurred in the performance of such services. These expenses will be invoiced separately other fees, and payment shall be due in full from Licensee within thirty (30) days of the date of invoice.

d. In the event that Licensee or any third party makes any unauthorized changes, modifications, enhancements, or improvements to the Licensed System, Licensor shall be relieved of its obligations to provide services under this Agreement for any portions of the Licensed System that have been effected, directly or indirectly, by such changes,

modifications, enhancements, or improvements. Such unauthorized alterations in the Licensed System and/or Licensee's default of any of its obligations under this Agreement shall be grounds for termination by Licensor of this Agreement for cause according to the provisions of Section 24 of the Agreement.

e. If Licensee requests assistance from Licensor, and Licensor in its sole judgment determines the assistance is beyond reasonable and customary assistance provided under this Agreement, the Licensor will advise the Licensee that the then current Custom Support Fee will apply. The Licensor will provide the assistance only after the Licensee agrees in writing to the Licensor to pay for such services. These expenses will be invoiced separately from other fees, and payment shall be due in full from Licensee within thirty (30) days of the date of invoice.

17. Disclaimer of Warranties. THE LIMITED WARRANTY IN SECTION 15 IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSOR SHALL NOT BE LIABLE FOR ANY INCIDENTAL AND/OR CONSEQUENTIAL DAMAGES TO LICENSEE OR ANY THIRD PARTY OCCURRING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE LICENSED SYSTEM OR ITS SERVICES UNDER THIS AGREEMENT, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH INCIDENTAL AND/OR CONSEQUENTIAL DAMAGES. FURTHER, LICENSOR SHALL NOT BE LIABLE FOR ANY DIRECT OR INDIRECT DAMAGES OF ANY TYPE OF NATURE, EXCEPT AS PROVIDED IN SECTIONS 20 AND 21 BELOW. LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE SERVICES SHALL BE UNINTERRUPTED. LICENSOR SHALL NOT BE RESPONSIBLE FOR ANY LOSS OF PROFITS, ANY INDIRECT OR CONSEQUENTIAL DAMAGES RESULTING FROM DAMAGE TO DATA, OR DAMAGES DUE TO HACKING OR AN EMPLOYEE OF LICENSEE DAMAGING DATA/SYSTEM, OR ANY DAMAGES DUE TO OPERATION OF THE THIRD PARTY SOFTWARE, EVEN IF LICENSOR HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

18. Retail Installment Sales and Security Contracts. LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE VALIDITY, ACCURACY, APPROPRIATENESS, USEFULNESS OR OTHER ASPECTS OR CHARACTERISTICS OF ANY RETAIL INSTALLMENT SALES AND SECURITY CONTRACT CREATED BY LICENSEE USING THE LICENSED SYSTEM.

19. Limited Remedies.

a. Except as provided in this paragraph, Licensee's sole remedy for a breach of the warranty of the Licensed System provided in Section 15 is limited to the remedy provided in that Section. If, thirty (30) days after the giving of the required notice described in Section 15, the non-conformity of the Licensor Software remains uncured and Licensor has not provided an alternative procedure, then Customer may terminate this Agreement by written notice given within ten (10) days after the end of the cure period. Upon the Licensee returning the Licensed System to Licensor under the terms stated in Section 25 of this Agreement, Licensor

shall return all fees covered by **Appendix B** and actually paid by the Licensee to Licensor and Licensor shall have no further obligations to Licensee.

b. Licensee's sole remedy for any failures of Licensor under Section 16 is, thirty (30) days after detailed written notice of the breach has been provided to Licensor and the breach remains uncured, to terminate this Agreement by written notice given within ten (10) days after the end of the cure period and have returned to it the fees actually paid by the Licensee to Licensor for the sixty (60) days preceding the date of termination.

c. The obligations of Licensor under this paragraph are the Licensee's sole remedy for any violation of Licensor's obligations under Sections 5 and 14. To the extent that any Customer Data must be corrected, recreated, restored or reprocessed due to any fault or negligence of Licensor, its employees or agents, or due to operation of Licensor Software, or due to a breach by Licensor of any of its warranties hereunder, Licensor will be responsible for the cost of taking commercially reasonable efforts to correct, recreate, restore or reprocess the data at no cost to Licensee. Both parties agree to fully cooperate with one another to effectuate the prompt correction, recreation, restoration or reprocessing of any Customer Data.

d. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 21, LICENSOR AND ITS THIRD PARTY LICENSORS SHALL NOT BE RESPONSIBLE FOR ANY CLAIMS AGAINST LICENSEE BY ANY OTHER PARTY NOR, EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, SHALL LICENSOR OR ITS THIRD PARTY LICENSORS BE LIABLE FOR ANY LOSS OF PROFITS, INTERRUPTION OF BUSINESS, NON-AVAILABILITY OF THE LICENSED SYSTEM OR THE SERVICES UNDER THIS AGREEMENT, LOSS OF DATA, OUT-OF-POCKET EXPENSES OR ANY OTHER DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, HOWEVER CAUSED, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, WARRANTY, STATUTORY RIGHTS OR ANY OTHER BASIS ARISING OUT OF LICENSEE'S USE OF THE LICENSED SYSTEM, THE MARKETING, DELIVERY OR SUPPORTING THEREOF, OR OTHERWISE ARISING PURSUANT TO THIS AGREEMENT.

20. Limitation of Liability. LICENSOR'S AGGREGATE LIABILITY TO LICENSEE FOR ANY CAUSE WHATSOEVER IS LIMITED TO AN AMOUNT EQUAL TO THE FEES COVERED BY **APPENDIX B** AND ACTUALLY PAID BY LICENSEE FOR USE OF THE LICENSED SYSTEM DURING THE THEN MOST RECENT 12 MONTH PERIOD OF TIME PRECEDING THE DATE OF THE EVENT (OR, IF MORE THAN ONE EVENT, THE FIRST EVENT) GIVING RISE TO THE LIABILITY.

21. Intellectual Property Indemnification. Licensor, at its own expense, shall defend any and all claims, actions and causes of actions brought against Licensee to the extent that it is based on a claim that the Licensed System infringes a patent, copyright, or intellectual or industrial property right of any person, firm, or corporation not a party to this Agreement, provided that (a) Licensee promptly notifies Licensor of any potential or threatened claims and the commencement of any such legal action, (b) Licensee has not by any act of commission or omission prejudiced Licensor's ability to successfully defend such litigation, and (c) Licensor

shall have exclusive control of the defense to such legal action and of all negotiations for settlement or compromise. If these conditions are met, Licensor shall indemnify and hold Licensee harmless with respect to all costs and damages actually awarded against Licensee arising out of such legal action, subject to the limitations of Section 20. In the event that the Licensed System becomes, or in Licensor's opinion is likely to become, the subject of a claim of infringement of a patent, copyright, or other intellectual or industrial property right of any person, firm or corporation not a party to this Agreement, Licensor may, at its option, either secure Licensee's right to continue using the Licensed System, replace or modify the Licensed System so as to make it non-infringing without materially impairing the Licensed System's utility, or, if neither of these alternatives is reasonably available to Licensor, terminate this Agreement upon one (1) month's written notice. In the event that Licensor elects to so terminate this Agreement to avoid infringement within twelve (12) months of delivery of the Licensed system to Licensee, then Licensor shall refund to Licensee the price paid for usage, login, and security rights to the software under this Agreement according to the percentage of days within that twelve (12) month period that Licensee did not have access to the Licensed System. If, however, Licensee notifies Licensor in writing during the one (1) month after Licensor's notice of termination under this Section that Licensee elects to continue to be licensed with respect to the Licensed System, then Licensee shall undertake, at Licensee's expense, the defense of any such legal action against Licensee and/or Licensor arising from Licensee's use of the Licensed System and shall indemnify and hold Licensor harmless with respect to all costs, damages, and attorney fees actually incurred and attributable to such continued use or further defense of said legal action after such notice is given to Licensor. Licensor shall have no liability to Licensee if the alleged infringement is based upon a use other than of a current, unaltered version of the Licensed System available from Licensor or upon a use or combination of the Licensed System with programs or data not supplied by Licensor. The foregoing states the entire liability of Licensor with respect to infringement.

22. Licensee's Indemnification. The Licensed System permits the Licensee to create its own retail installment sales and security contracts for which Licensee is solely responsible. Licensee is solely responsible for its use, preparation and transmission of Customer Data and the accuracy of Customer Data, or any other aspect, including, for example, Annual Percentage Rate Calculations, of any retail installment sales and security contract created by Licensee through its use of the Licensed System. Licensee shall indemnify and hold Licensor harmless against claim, action, or cause of action which arises from the use of the Licensed System by Licensee under this Agreement including, but not limited to, attorneys fees actually incurred, costs, expenses, damages, judgments, awards, and penalties, provided that the same does not arise solely from Licensor's negligence or willful misconduct. Further, Licensee shall be liable to Licensor and any affected franchisee of Licensor for any damages, direct or consequential, caused by any use of the Licensed System by Licensee that has not been approved by Licensor in writing. Further, Licensee shall be liable to Licensor and any affected franchisee of Licensor for any damages, direct or consequential, caused by a third party's activities which result from Licensee's use of the Licensed System in any manner which has not been approved by Licensor in writing.

23. Injunction. If Licensee attempts to use, copy, license or convey the Licensed System or any portion thereof or any copies thereof in a manner contrary to the terms of

this Agreement, Licensor shall have, in addition to any other remedy, the right to injunctive relief. Licensee hereby acknowledges that other remedies are inadequate.

24. Termination. This Agreement shall automatically and without notice expire or terminate concurrently with the expiration or termination of the Franchise Agreement. In addition, if, at any time, Licensee defaults in the performance of any of its obligations under this Agreement and such default is not corrected within ten (10) days after Licensor has given Licensee written notice specifying such default, in addition to any other remedies that it may have, Licensor shall have the right to terminate this Agreement for cause by giving written notice of termination to Licensee, and this Software License Agreement shall then immediately terminate. Termination shall not relieve either party of its pre-existing obligations under this Agreement. Upon initiation of any bankruptcy or receivership proceedings by or against Licensee, or upon execution of a deed of trust or assignment for the benefit of creditors or any other transfer or assignment of a similar nature by Licensee, Licensor reserves the right to terminate this Agreement immediately or at anytime thereafter.

Except as provided in Section 19(a) above, upon termination of this Agreement, Licensor shall not have any obligation to refund any fees paid to it by Licensee for use of the Licensed System.

Licensee further acknowledges and agrees that Licensor may terminate this Agreement or suspend Licensee's access to and use of the Licensed Software and Licensed Documentation under and as described in Section 17.2 of the Franchise Agreement.

25. Return of the Licensed System. Immediately upon termination of the Agreement, Licensee shall cease all use, and make no further use, in whole or part, of the Licensed System and shall return the Licensed System and all copies thereof, including any partial copies, to Licensor. With this return of the Licensed System, Licensee shall certify in writing that the original and all copies in whole and part and in any form of the Licensed System have been delivered to Licensor.

26. Infringement. Licensee shall promptly notify Licensor in writing of potential or threatened infringement of Licensor's proprietary rights in the Licensed System by any person, firm, or corporation not a party to this Agreement of which Licensee becomes aware during the term of this Agreement.

27. Shipment. All risk of loss or damage to the Licensed System after it is received by Licensee shall be borne by Licensee. Licensee shall pay the shipping and handling charges for delivery of the Licensed System or any hardware procured by Licensor for Licensee under this Agreement.

28. Program Services. Nothing in this Agreement shall be construed to imply that Licensor has any additional obligation to furnish any additional services or material other than those specifically indicated herein.



Licensee agrees that Licensor shall own and have the right to make, use, sell or license to others the Licensed System and any improvements to the Licensed System or any new Licensed System developed by Licensor as a result of any program services to Licensee under this or any other agreement with Licensor relating to the Licensed System.

29. Hardware Purchase and Warranty Disclaimer. Solely as an accommodation to Licensee, Licensor agrees to obtain on Licensee's behalf the computer hardware and equipment specified in **Appendix A** hereto and to provide that hardware and equipment to Licensee at Licensee's cost set forth in **Appendix B** for Licensee's use with the Licensed System. Licensee acknowledges Licensor does not manufacture any of that hardware and equipment. LICENSOR PROVIDES NO WARRANTY WHATSOEVER FOR ANY HARDWARE OR EQUIPMENT PROVIDED TO LICENSEE. THAT HARDWARE AND EQUIPMENT IS PROVIDED BY LICENSOR STRICTLY AS IS. The original manufacturer of that hardware and equipment may, however, provide warranties that may be passed through or otherwise available to Licensee. If so, Licensor will assist Licensee in obtaining any such warranties for Licensee's benefit and use. Licensee shall not, however, hold Licensor responsible in any way for any defects or damage in the hardware or equipment not caused solely by Licensor's intentional misconduct.

30. Notices. All written notices and reports permitted or required to be delivered by the provisions of this Agreement shall be deemed so delivered at the time delivered by hand, one (1) business day after sending by telecopy or comparable electronic system or via overnight courier or two (2) business days after placed in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid and addressed to the party's principal offices first above written or at its most current principal business address of which the notifying party has been notified.

31. Assignment and Sublicense. This Agreement and any of Licensee's rights with respect to use of the Licensed System is personal in nature and may not be assigned, sublicensed, used to provide business services at any location other than designated in **Appendix C** of this Agreement, or otherwise transferred by Licensee without prior written consent from Licensor.

32. Benefit. This Agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, successors in the interest and permissible assigns of the parties to this Agreement.

33. Taxes. Licensee shall pay all sales, property, excise, use and other federal, state or local taxes and charges hereinafter due and payable by reason of this Agreement of the Licensed System or its use or possession of the same by Licensee. If a certificate of exemption or similar document is to be used in order to exempt Licensee from such liability, Licensee shall furnish a copy of such certificate or document to Licensor upon request.

34. Severability. If any portion of this Agreement is found to be invalid or unenforceable, such portion of the Agreement shall be narrowed to the extent necessary to make it valid and enforceable. If any portion of this Agreement cannot be so narrowed, the remaining

portions of this Agreement shall remain in full force and effect and shall continue to be binding upon the parties.

35. Waiver. Failure of either party to this Agreement to exercise any of its rights under this Software License Agreement in a particular instance shall not be construed as a waiver of those rights or any other rights under this Agreement for any purpose.

36. Resolution of Disputes. The parties agree that all controversies, disputes or claims arising out of or related to this Agreement, the relationship between Licensor and Licensee and the validity of this Agreement must be submitted for binding arbitration in accordance with Section 19.1 of the Franchise Agreement, the provisions of which are incorporated and adopted herein, in their entirety, as though copied *in extenso*.

37. Adoption and Incorporation of Certain Provisions of the Franchise Agreement. The parties hereby agree that the following provisions which are set forth in the Franchise Agreement shall have equal applicability to and under this Agreement, to-wit: Section 20.5 (Governing Law), Section 20.6 (Choice of Forum), Section 20.7 (Jury Trial Waiver), Section 20.8 (Punitive Damage Waiver), Section 20.9 (Limitation of Actions), Section 20.12 (Attorneys' Fees), and Section 20.18 (Compliance with Anti-Terrorism Laws). Each of the foregoing provisions are copied herein and adopted by the parties to this Agreement in their entirety.

38. Delay. Licensor shall not be deemed to be in default of any provision of this Agreement or for failures in performance under this Agreement resulting from acts or events beyond the reasonable control of Licensor, including, but not limited to, delays in transportation, storms, extreme weather conditions, fire, explosion, flood, strike, riot, war, mobilization, civil unrest, import or export circumstances, failure or unavailability of communications, power or telephone lines, supplies or service, delay in delivery, failure or malfunction of equipment or of software not directly supplied and supported by Licensor, or other similar catastrophes, or other acts of God.

39. Export Control. Software, including technical data, is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Specifically, the Licensed Software may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. You may not use the Licensed Software in violation of this Agreement or in violation of United States law, including laws which prohibit, without limitation, the development, design, manufacture or production of nuclear, missiles, or chemical or biological weapons.

40. Terms and Conditions Regarding Use of Microsoft Software. Licensor is providing certain Microsoft software products to Licensee as a service by Licensor. These products include computer software and may include associated media, printed materials, and "online" or electronic documentation. The license terms for the Microsoft software products is

set forth in the Customer License Terms attached as **Appendix D**, which is incorporated herein by this reference.

41. Amendment. No one has authority to amend this Agreement on behalf of Licensor except an officer of Licensor in writing.

Byrider Franchising, Inc. ("Licensor")

\_\_\_\_\_  
("Licensee")

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name:

Printed Name: \_\_\_\_\_

Title: President

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## APPENDIX A

### **Licensee Computer System Requirements Per Location**

Example as of January 2010:

Your requirements and specifics may vary. Quantity and exact model types will be determined on a case-by-case basis. Typical items and quantities are stated below. All prices are approximate and subject to change. All costs are U.S. dollars.

<b>Required Items</b>	<b>Quantity</b>	<b>Approximate Cost</b>
Wall mount rack	1	\$260.00
Rack mount shelf	1	\$103.00
TrippLite SmartPro 500 RM UPS	1	\$203.00
TrippLite Rack Mount Power Strip (PDU)	1	\$78.00
Okidata ML320 turbo	1	\$414.00
HP LaserJet P3005n network printer	1	\$770.00
HP LaserJet P2035 check printer	1	\$240.00
Power Connect 2724 24 port 10/100 switch	1	\$370.00
Business Recovery Network Solution	1	\$1700.00
USR 56K External Modem	1	\$115.00
Cisco 1841 router	1	\$2600.00
SMARTnet Standard Maintenance – 1800 series router *	1	\$150.00
Cisco ASA firewall	1	\$770.00
Network Policy Assurance*	1	\$100.00
6 foot parallel printer cable	1	\$8.00
3 foot cat5 patch cable	30	\$100.00
7 foot cat5 patch cable	35	\$140.00
14 foot cat5 patch cable	30	\$180.00
20-user License Pack for SecureCRT	1	\$2120.00
PC (price varies depending upon build options)	10	\$15,000.00

<b>Optional Items</b>	<b>Quantity</b>	<b>Approximate Cost</b>
JDBS VPN Software User License	1	\$100.00
JDBS VPN Annual Service Subscription *	1	\$100.00
Websense Internet filter	TBD	\$900.00
HP LaserJet CP3525n color laser printer	2	\$2070.00

\* This item is billed yearly and is a required annual maintenance fee.

## APPENDIX B

### License Fees

Initial Fee: [to be determined]

Data Conversion Fee: [to be determined]

Monthly Usage Fee: \$0.00

Custom Support Fee: \$0.00

#### Recurring Fees:

Costs are representative as of January 2010.

Retail Installment Contract Usage: \$3.60 per form, billed quarterly in advance based upon expected usage.

Notice of Incompleteness Letters: \$1.00 per letter, billed quarterly for actual usage.

SmartNet ASA Firewall annual maintenance: \$115.00.

Finance By Phone: \$2.95 per Lead.

GoJDB: \$1.95 per Lead.

Privacy Notices sent annually to customers (optional): \$1.05 per customer letter.

Maintenance Fee to Third Party Vendors: [to be determined]

**APPENDIX C**

**Licensed Location**

Street Address:	
City:	
County:	
State/Province:	
Country:	

\_\_\_\_\_  
Licensor Signature

\_\_\_\_\_  
Licensee Signature

## APPENDIX D

### CUSTOMER LICENSE TERMS

#### TERMS AND CONDITIONS REGARDING USE OF MICROSOFT SOFTWARE

This document concerns your use of Microsoft software, which includes computer, software provided to you by Byrider Franchising, Inc. as described below, and may include associated media, printed materials, and "online" or electronic documentation (individually and collectively "SOFTWARE PRODUCTS"). Byrider Franchising, Inc. does not own the SOFTWARE PRODUCTS and the use thereof is subject to certain rights and limitations of which Byrider Franchising, Inc. needs to inform you. Your right to use the SOFTWARE PRODUCTS is subject to your agreement with Byrider Franchising, Inc., and to your understanding of, compliance with and consent to the following terms and conditions, which Byrider Franchising, Inc. does not have authority to vary, alter or amend.

**1. DEFINITIONS.**

"Client Software" means software that allows a Device to access or utilize the services or functionality provided by the Service Software.

"Device" means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, "smart phone", or other electronic device.

"Service Software" means software that provides services or functionality on a computer acting as a server.

"Redistribution Software" means the software described in Paragraph 4 ("Use of Redistribution Software") below.

- 2. OWNERSHIP OF SOFTWARE PRODUCTS.** The SOFTWARE PRODUCTS are licensed to Byrider Franchising, Inc. from an affiliate of the Microsoft Corporation ("Microsoft"). All title and intellectual property rights in and to the SOFTWARE PRODUCTS (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text and "applets" incorporated into the SOFTWARE PRODUCTS) are owned by Microsoft or its suppliers. The SOFTWARE PRODUCTS are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your possession, access, or use of the SOFTWARE PRODUCTS does not transfer any ownership of the SOFTWARE PRODUCTS or any intellectual property rights to you.
- 3. USE OF CLIENT SOFTWARE.** You may use the Client Software installed on your Devices by Byrider Franchising, Inc. only in accordance with the instructions, and only in connection with the services, provided to you by Byrider Franchising, Inc. The terms of this document permanently and irrevocably supersede the terms of any Microsoft End User License Agreement which may be presented in electronic form during your use of the Client Software.
- 4. USE OF REDISTRIBUTION SOFTWARE.** In connection with the services provided to you by Byrider Franchising, Inc., you may have access to certain "sample", "redistributable" and/or software development ("SDK") software code and tools (individually and collectively "Redistribution Software"). **YOU MAY NOT USE, MODIFY, COPY, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER USE RIGHTS (SPUR) APPLICABLE TO Byrider Franchising, Inc., WHICH TERMS MUST BE PROVIDED TO YOU BY Byrider Franchising, Inc..** Microsoft does not permit you to use any Redistribution Software unless you expressly agree to and comply with such additional terms, as provided to you by Byrider Franchising, Inc.
- 5. COPIES.** You may not make any copies of the SOFTWARE PRODUCTS; provided, however, that you may (a) make one (1) copy of Client Software on your Device as expressly authorized by Byrider Franchising, Inc.; and (b) you may make copies of certain Redistribution Software in accordance with paragraph 4 (Use of Redistribution Software). You must erase or destroy all such Client Software and/or Redistribution software upon termination or cancellation of your agreement with Byrider Franchising, Inc., upon notice from Byrider Franchising, Inc. or upon transfer of your Device to another person or entity, whichever first occurs. You may not copy any printed materials accompanying the SOFTWARE PRODUCTS.
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- 7. NO RENTAL.** You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the SOFTWARE PRODUCTS to any third party, and you may not permit any third party to have access to and/or use the functionality of the SOFTWARE PRODUCTS.
- 8. TERMINATION.** Without prejudice to any other rights, Byrider Franchising, Inc. may terminate your rights to use the SOFTWARE PRODUCTS if you fail to comply with these terms and conditions. In the event of termination or cancellation, you must stop using and/or accessing the SOFTWARE PRODUCTS, and destroy all copies of the SOFTWARE PRODUCTS and all of its component parts.
- 9. NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT.** ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY Byrider Franchising, Inc. AND NOT BY MICROSOFT OR ITS AFFILIATES OR SUBSIDIARIES.
- 10. PRODUCT SUPPORT.** Any product support for the SOFTWARE PRODUCTS is provided to you by Byrider Franchising, Inc. and is not provided by Microsoft or its affiliates or subsidiaries.
- 11. NOT FAULT TOLERANT.** THE SOFTWARE PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE SOFTWARE PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.

12. **EXPORT RESTRICTIONS.** The SOFTWARE PRODUCTS are of U.S. origin for purposes of U.S. export control laws, national laws that apply to the SOFTWARE PRODUCTS, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.
13. **LIABILITY FOR BREACH.** In addition to any liability you may have to **Byrider Franchising, Inc.**, you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions.



## EXHIBIT H

### OPERATIONS MANUALS' TABLES OF CONTENTS AND COURSE DESCRIPTIONS

This Exhibit H contains the following manual's tables of contents:

- I. SALES OPERATIONS
- II. CNAC OPERATIONS
- III. BYRIDER/CNAC REPORTS
- IV. SERVICE OPERATIONS

The following course descriptions are provided. With the exception of Accounting Systems Education – Advanced, the courses described constitute the Company's Initial Training Program.

- I. ADVANCED ACCOUNTING SYSTEMS EDUCATION
- II. CNAC OPERATIONS
- III. COLLECTIONS
- IV. SALES ASSOCIATE
- V. SALES MANAGEMENT
- VI. SERVICE MANAGEMENT
- VII. LEADERSHIP ESSENTIALS

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**\*NOTE:** The categorization of Discover reports into these sections of this manual is purely for organizational purposes. It is not uncommon for more than one area to use a report.

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## Glossary

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## **ADVANCED ACCOUNTING**

Advanced Accounting imparts ideas and concepts needed for accounting reconciliation; financial statement creation and review; and the use of Excel as a tool to analyze, enhance, and present financial data.

Recommended for: all accounting personnel

Available to: senior store management

Prerequisites: Byrider Digital University certification as "Cashier" and "Accounts Payable Clerk"

Length: 2 days

## **CNAC OPERATIONS**

This course is designed for the CNAC Finance Manager. Topics covered include: an introduction to Byrider/CNAC with historical information on CNAC trends; CNAC structure; account assignment; correlation between A.R.E. and static pool; and administrative/legal responsibilities relating to data security. There is a hands-on review of real life underwriting decisions on individual deals. The course also covers a management perspective on collections, repossessions, DIP's, back offs, charge offs, bad debt recovery, personnel administration, the reduced gross rule, and report analysis.

Mandatory for: CNAC/Finance Managers

Recommended for: Account representatives in line for promotion and Collection team leaders

Available to: senior store management

Prerequisite: none

Length: 2 day

## **COLLECTIONS**

This course is designed for the Account Representative (Collector) or Portfolio Manager. Topics covered in the course include: description of the Byrider/CNAC business model and operating standards; legal issues associated with collecting; collection do's and don'ts; NSF procedures; collection letters; outside collections; in office interviews; the use of the Collections module in Discover; skip tracing; payment arrangements; bankruptcy; repossession; back off; charge off; the Collection Boards; and Discover reports. This is a hands-on course where attendees will practice the use of Discover and will role play collections activities.

Mandatory for: Account Representative (Collectors), Portfolio Managers, and CNAC Managers

Available to: senior store management

Prerequisite: none

Length: 2 days

## **SALES ASSOCIATE**

This course is designed to train new Sales Associates how to operate within the Byrider Sales System and to reinforce skills previously learned by experienced Sales Associates. Materials covered in the course include: the history of J.D. Byrider and its mission and values; the relationship between J.D. Byrider and CarNow Acceptance Company (CNAC); all sales elements of the Byrider Sales and Finance Process; the use of the Sales Control module in Discover web; and standards of operation that apply to the sales force. This is a hands-on course where students will role play various sales activities and practice computerized Sales Control applications.

Mandatory for: Sales Associates and Sales Managers

Available to: senior store management

Prerequisite: none

Length: 2 days

## **SALES MANAGEMENT**

This course is designed to train managers how to operate the Sales Department of a J.D. Byrider store. Materials covered in the course include inventory control; personnel management issues to include goal setting, hiring, and training; sales management daily and weekly duties; the identification and correction of operating variances to include the use of boards and reports; control of deal structure; and expense control.

Mandatory for: Sales Managers

Prerequisite: Sales Associate

Available to: senior store management

Length: 1 day

## **SERVICE MANAGEMENT**

This course is designed for personnel responsible for managing the Service Departments of J.D. Byrider stores. Materials include an explanation of the Service/Reconditioning Departments in the J.D. Byrider Franchising business model as well as hands-on practice in the use of the Vehicle Module Application of Discover. Additional topics discussed include: reconditioning procedures; inspections; assigning work both internally and to vendors; inventory management; purchase orders; reconciling purchase orders, receipts, and invoices; parts control; safety and environmental concerns; shop maintenance; customer programs; use of boards and reports; personnel management; and customer service.

Mandatory for: Service Managers

Available to: senior store management and personnel in line for promotion to Service Manager

Prerequisite: none

Length: 2 days

## **LEADERSHIP ESSENTIALS – DRIVING PERFORMANCE**

This course provides information on methods for managers to improve their communication, motivation, and coaching/mentoring techniques. By applying the techniques learned, employee satisfaction and retention can be improved which leads to customer satisfaction which has a direct impact on the success of the business. The class involves participants in skill practices, simulations, and role playing with content that applies to participant's individual situations.

Available to: anyone in a leadership position

Prerequisite: none

Length: 2 days

EXHIBIT I

CO-FRANCHISEE AGREEMENT

WHEREAS, \_\_\_\_\_ ("Franchisee") entered into a Franchise Agreement with Byrider Franchising, Inc. ("BFI") dated \_\_\_\_\_, for the operating of a J.D. Byrider franchise;

WHEREAS, \_\_\_\_\_ ("Finance Division") has been incorporated for the sole purpose of implementing the franchisee's duties and obligations of the Franchise Agreement relating to CNAC finance and collection;

NOW, THEREFORE, for acknowledged consideration, the undersigned agree to the following:

1. The Finance Division does hereby ratify and agree to be bound by all terms of the Franchise Agreement, and to be deemed a signatory of the Franchise Agreement;
2. Notice to Franchisee is deemed to be notice to the Finance Division;
3. All terms of the Franchise Agreement shall remain in full force and effect, and both the Franchisee and Co-Franchisee are jointly and severally responsible for all obligations of the Franchise Agreement.

WITNESS our hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

FRANCHISEE

BYRIDER FRANCHISING, INC.

BY \_\_\_\_\_

BY \_\_\_\_\_

CO-FRANCHISEE  
"Finance Division"

BY \_\_\_\_\_

ADDENDUM TO  
Lease Agreement dated \_\_\_\_\_, 20\_\_\_\_  
between  
\_\_\_\_\_, Landlord  
and  
\_\_\_\_\_, Tenant

In consideration of the agreement of Byrider Franchising, Inc., to enter into a J.D. Byrider Franchise Agreement with Tenant for the premises demised hereby (hereinafter referred to as the "Franchise Agreement"), the lease to which this Addendum is attached (this "Lease") is hereby amended by adding the following provisions:

1. Franchisor Approval of Lease. This Lease shall be of no force or effect until approved in writing by Byrider Franchising, Inc., its successors and assigns (hereinafter referred to as the "Franchisor").
2. Notice of and Right to Cure Tenant's Default. In the event of a default by Tenant, Landlord shall deliver written notice of such default to Franchisor at 12802 Hamilton Crossing Blvd., Carmel, Indiana, 46032, or at such other address as Franchisor notifies Landlord from time to time in writing. Landlord agrees that Franchisor, at its sole option and without any obligation to do so, may cure any such default within the later of (i) the cure period as specified in the Lease, or (ii) thirty (30) days after Franchisor receives written notice of Tenant's default, in which event Landlord shall accept such cure as if the same had been made by Tenant, and Landlord shall not be entitled to terminate the Lease or exercise any other remedy available to Landlord on account of such default.
3. Franchisor's Right to Assume Lease. In the event Franchisor notifies Landlord in writing ("Franchisor's Notice") that, pursuant to the Franchise Agreement, Franchisor is entitled to assume all rights and obligations of Tenant under the Lease, Tenant hereby directs Landlord to recognize Franchisor as Tenant under the Lease, and Landlord agrees to recognize Franchisor as Tenant. Tenant agrees that it shall claim no interest or rights as Tenant or otherwise with respect to the Lease subsequent to Franchisor's delivery of Franchisor's Notice to Landlord. Tenant hereby agrees to hold Landlord and Franchisor harmless from any loss, cost and expense associated with Landlord's recognition of Franchisor as Tenant under the Lease. Upon delivery of Franchisor's Notice, Franchisor shall automatically become the Tenant under the Lease, and Franchisor shall be entitled to all rights of Tenant under the Lease. Subsequent to delivery of Franchisor's Notice, Landlord agrees to execute such confirmatory documentation reasonably requested by Franchisor, including, but not limited to a short form lease suitable for recording.
4. Assignment and Subletting. Tenant shall retain the right to sublease the premises, or any right or privilege connected therewith by first obtaining the written consent of Landlord, which shall not be unreasonably delayed or withheld.  
  
Tenant may, without Landlord's prior consent, assign the Lease or sublet the premises (i) to any bona-fide I.D. BYRIDER SYSTEMS, INC. operating company or any franchisor, franchisee or developer of I.D. BYRIDER SYSTEMS, INC. (ii) to any corporation, partnership or other entity that is controlled by or under common control with Tenant, or any entity resulting from a merger or consolidation with Tenant, or which acquires all or substantially all Tenant's assets, or (iii) to any entity that is formed by Tenant in contemplation of or incidental to the listing of the reorganized companies on a recognized securities exchange. In addition, in the event of an assignment or sublease to any assignee or sublessee ("Transferee") that demonstrates to Landlord's reasonable satisfaction, that such Transferee has the financial ability and business experience to perform Tenant's obligations under the Lease, Landlord agrees that Tenant shall be released from further liability to Landlord under the Lease from and after the date such qualified Transferee assumes in writing all of Tenant's obligations under the Lease.
5. Right of First Refusal/Option to Purchase. If the Lease contains a right of first refusal to lease additional space, an option to purchase the premises or land leased hereby, or any similar right, and Tenant has not elected to exercise any such right, such right shall not expire until and unless Landlord shall have given Franchisor at least thirty (30) days' written notice, during which thirty (30) days Franchisor shall have the right to exercise any such right. Tenant hereby agrees that Franchisor, for itself, may exercise any such right without interference from Tenant.
6. Conflict. In the event any provisions contained in this Addendum and the lease to which it is attached are in conflict, the provisions contained within this Addendum shall control.
7. Proprietary Marks. Franchisor may enter the Premises at any time (pursuant to the Franchise Agreement with Tenant) to make modifications necessary to protect the System or the Proprietary Marks, as defined herein. The "System" shall mean all systems developed by Franchisor relating to the purchase, sale and financing of used automobiles and the operation of retail



Tenant. Landlord agrees that it shall have no interest in the System or any Proprietary Marks. Landlord hereby consents to Tenant's use of the System and the Proprietary Marks as Franchisor may prescribe from time to time.

8. Security Interest. Tenant agrees not to encumber or otherwise pledge Tenant's interest in the Lease to any financial institution or other entity as security for a loan or otherwise without the prior written consent of Franchisor.

IN WITNESS WHEREOF, the parties have executed and delivered this Addendum to Lease as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

LANDLORD:

TENANT:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

ADDENDUM TO

Purchase Agreement dated \_\_\_\_\_, 20\_\_

between

\_\_\_\_\_, Seller

and

\_\_\_\_\_, Buyer

In consideration of the agreement of Byrider Franchising, Inc., to enter into a J.D. Byrider Franchise Agreement with Buyer for the premises demised hereby (hereinafter referred to as the "Franchise Agreement"), the Purchase Agreement is hereby amended by adding the following provision. Any provision which contradicts this addendum is of no force and effect:

1. Company Approval of Purchase Agreement. This Purchase Agreement is of no force or effect until approved in writing by Byrider Franchising, Inc.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SELLER:

\_\_\_\_\_  
\_\_\_\_\_

BUYER:

\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT F**  
**TO FRANCHISE AGREEMENT**

**BYRIDER FRANCHISING, INC.**

**DISCLOSURE ACKNOWLEDGMENT STATEMENT**

BYRIDER FRANCHISING, INC. ("Franchisor"), through the use of this document, desires to ascertain (a) that the undersigned, individually and as a representative of any legal entity established to acquire the franchise rights ("Franchisee"), fully understands and comprehends that the purchase of a BYRIDER sales finance franchise is a business decision, complete with its associated risks, and (b) that Franchisee is not relying upon any oral statement, representations, promises or assurances during the negotiations for the purchase of the franchise which have not been authorized by the Franchisor. In that regard, the undersigned acknowledges that:

2. The Franchisee recognizes and understands that business risks, which exist in connection with the purchase of any business, make the success or failure of the franchise subject to many variables, including, among other things, the skills and abilities of the Franchisee, the hours worked by the Franchisee, competition, interest rates, the economy, inflation, business location, operation costs, lease terms and costs and the market place. The Franchisee hereby acknowledges its awareness of and willingness to undertake these business risks.

3. The Franchisee acknowledges receipt of the Franchisor's Franchise Disclosure Document and Exhibits (collectively, the "FDD"). The Franchisee acknowledges that it has had the opportunity to personally and carefully review these documents. Furthermore, the Franchisee has been advised to seek professional assistance, to have professionals review the documents and to consult with other franchisees regarding the risks associated with the purchase of the franchise.

4. The Franchisee agrees and states that the decision to enter into this business risk is in no manner predicated upon any oral representations, assurances, warranties, guarantees or promises made by the Franchisor or any of its officers, employees or agents (including any franchise broker) as to the likelihood of success of the franchise. Except as contained in the Franchisor's FDD, the Franchisee acknowledges that it has not received any information from the Franchisor or any of its officers, employees or agents (including any franchise broker) concerning actual, average, projected or forecasted franchise sales, profits or earnings. If the Franchisee believes that it has received any information concerning actual, average, projected or forecasted franchise sales, profits or earnings other than those contained in the FDD, please describe these in the space provided below or write "None."

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The Franchisee further acknowledges that the President of the United States of America has issued Executive Order 13224 (the "Executive Order") prohibiting transactions with terrorists and terrorist organizations and that the United States government has adopted, and in the future may adopt, other anti-terrorism measures (the "Anti-Terrorism Measures"). The Franchisor therefore requires certain certifications that the parties with whom it deals are not directly or indirectly involved in terrorism. For that reason, the Franchisee hereby certifies that neither it nor any of its employees, agents, or representatives, nor any other person or entity associated with the Franchisee, is:

- (a) a person or entity listed in the Annex to the Executive Order;
- (b) a person or entity otherwise determined by the Executive Order to have committed acts of terrorism or to pose a significant risk of committing acts of terrorism;
- (c) a person or entity who assists, sponsors, or supports terrorists or acts of terrorism;  
or
- (d) owned or controlled by terrorists or sponsors of terrorism.

The Franchisee further covenants that neither it nor any of its employees, agents, or representatives, nor any other person or entity associated with the Franchisee, will during the term of the Franchise Agreement become a person or entity described above or otherwise become a target of any Anti-Terrorism Measure.

Acknowledged this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**FRANCHISEE:**

Sign here if you are taking the franchise as an  
**INDIVIDUAL(S)**

Sign here if you are taking the franchise as a  
**CORPORATION or LIMITED LIABILITY  
COMPANY**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name of Legal Entity

Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

## EXHIBIT M

### State Agencies:

(**CALIFORNIA**) CALIFORNIA DEPARTMENT OF CORPORATIONS AT ANY OF ITS OFFICES;

(**HAWAII**) SECURITIES EXAMINER, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, SECURITIES COMPLIANCE BRANCH, 335 MERCHANT STREET, ROOM 203, HONOLULU, HAWAII 96813

(**ILLINOIS**) ILLINOIS ATTORNEY GENERAL'S OFFICE, 500 SOUTH SECOND STREET, SPRINGFIELD, ILLINOIS 62706, WHICH ADMINISTERS AND ENFORCES THE ILLINOIS FRANCHISE DISCLOSURE ACT;

(**INDIANA**) SECURITIES COMMISSION, 302 WEST WASHINGTON ST, RM. E-111, INDIANAPOLIS, INDIANA 46204;

(**MARYLAND**) OFFICE OF THE ATTORNEY GENERAL, DIVISION OF SECURITIES, 200 ST. PAUL PLACE, BALTIMORE, MARYLAND 21202;

(**MICHIGAN**) CONSUMER PROTECTION DIVISION, DEPARTMENT OF THE ATTORNEY GENERAL, 670 LAW BUILDING, LANSING, MICHIGAN 48913;

(**MINNESOTA**) COMMISSIONER OF COMMERCE, 500 METRO SQUARE BUILDING, SEVENTH AND ROBERTS STREET, ST. PAUL, MINNESOTA 55101, WHICH ADMINISTERS AND ENFORCES THE MINNESOTA FRANCHISE ACT;

(**NEW YORK**) NEW YORK STATE DEPARTMENT OF LAW, BUREAU OF INVESTOR PROTECTION AND SECURITIES, 120 BROADWAY, NEW YORK, NEW YORK 10271;

(**NORTH DAKOTA**) SECURITIES COMMISSIONER, 600 EAST BOULEVARD, BISMARCK, NORTH DAKOTA 58505;

(**RHODE ISLAND**) RHODE ISLAND DEPARTMENT OF BUSINESS REGULATION, SECURITIES DIVISION, JOHN O. PASTORE COMPLEX, 1511 PONTIAC AVENUE, BUILDING 69-1, CRANSTON, RI 02910;

(**SOUTH DAKOTA**) SOUTH DAKOTA DIVISION OF SECURITIES, 118 WEST CAPITOL AVENUE, PIERRE, SOUTH DAKOTA 57501;

(**VIRGINIA**) COMMONWEALTH OF VIRGINIA, CORPORATION COMMISSION, P.O. BOX 1197, RICHMOND, VIRGINIA 23209;

(**WASHINGTON**) DEPARTMENT OF FINANCIAL INSTITUTIONS, P.O. BOX 9033, OLYMPIA, WASHINGTON 98507-9033;

(**WISCONSIN**) COMMISSIONER OF SECURITIES, 345 W WASHINGTON AVENUE, 4TH FLOOR, MADISON, WISCONSIN 53703, WHICH ADMINISTERS AND ENFORCES THE WISCONSIN FRANCHISE INVESTMENT LAW.

The name and address of the Company's agent in the following states authorized to receive service for process is:

(**CALIFORNIA**, in relation to matters arising under the Franchise Investment Law) Commissioner of Corporations, 1107 9th St., Suite 800, Sacramento, California 95814;

(**HAWAII**) Commissioner of Securities, 335 Merchant Street, Room 203, Honolulu, Hawaii 96813;

(**ILLINOIS**) Illinois Attorney General, 500 South Second Street, Springfield, Illinois 62706;

(**INDIANA**) Secretary of State, 201 State House, Indianapolis, Indiana 46204;

(**MARYLAND**) Maryland Securities Commissioner, 200 St. Paul Place, Baltimore, Maryland 21202;

(**MICHIGAN**) Corporation & Securities Bureau, Department of Commerce, P.O. Box 30222, Lansing, Michigan 48909;

(**MINNESOTA**) Commissioner of Commerce, 500 Metro Square Building, Seventh and Roberts Street, St. Paul, Minnesota 55101;

(**NEW YORK**) New York Secretary of State, 162 Washington Avenue, Albany, New York 12231;

(**NORTH DAKOTA**) Securities Commissioner, 600 East Boulevard, Bismarck, North Dakota 58505;

(**RHODE ISLAND**) Rhode Island Department of Business Regulation, Securities Division, John O. Pastore Complex, 1511 Pontiac Avenue, Building 69-1, Cranston, RI 02910;

(**SOUTH DAKOTA**) Securities Commissioner, 118 West Capitol Avenue, Pierre, South Dakota 57501;

(**VIRGINIA**) Commonwealth of Virginia, Corporation Commission, P.O. Box 1197, Richmond, Virginia 23209;

(**WASHINGTON**) Department of Financial Institutions, P.O. Box 9033, Olympia, Washington 98507-9033;

(**WISCONSIN**) Commissioner of Securities, 345 W. Washington Avenue, 4th Floor, Madison, Wisconsin 53703.

**List of Franchisees Who Left the System**

**Terminated**

Jeff Sikes (AL103)  
Huntsville, AL  
256-852-7422

Wess Jackson (AL107, AZ102, AZ106, FL136)  
Glendale, AZ  
623-435-5600

Robert Hirst (AZ105)  
Chandler, AZ  
480-821-8833

Jim Thompson (FL143, GA104)  
Jacksonville, FL  
904-721-9000

David Petersen (MI102)  
Wyoming, MI  
616-241-5400

James Baker (MO103)  
Columbia, MO  
573-817-1700

Vince Keller (NC107)  
Charlotte, NC  
704-805-1990

Santo Sampino (NY104)  
West Hempstead, NY  
516-505-7000

David Nikolson (OH110B)  
Ashtabula, OH  
440-992-3900

Jim Wickemeyer (OH123)  
Canton, OH  
330-458-0000

Gary Duncan (VA105)  
Blacksburg, VA  
540-443-9141

**Canceled**

Jeff Fritz (AZ107)  
843 E. Palo Verde St.  
Yuma, AZ 85365  
928-344-0122

**Not Renewed**

Jim Hadley (IN115A)  
Florence, KY  
859-746-0043

David Nikolson (OH121)  
Ashtabula, OH  
440-992-3900

Beth Melamed (PA102)  
Lancaster, PA  
717-393-9133

Dr. J.L. Gayton (SC110)  
Seneca, SC  
864-882-4646

**Inactive**

David O. Crow (IL113)  
Glenview, IL  
847-486-0778

John Dralle (IL114)  
Watseka, IL  
815-432-4948

Andrew F. Dixon (MD101)  
Waldorf, MD  
301-645-7000

Larry Tilman Weaver (MO104)  
Branson, MO  
417-336-5300

Milstein/Ange (OH133)  
Euclid, OH  
216-486-6400



**ITEM 23**

**RECEIPTS**

This Disclosure Document summarizes certain provisions of the Franchise Agreement, the Area Development Agreement and other information in plain language. Read this Disclosure Document and all agreements carefully.

If Byrider Franchising, Inc. offers you a franchise, it must provide this Disclosure Document to you 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale. However, some state franchise laws require Byrider Franchising, Inc. to provide this Disclosure Document to you at the first personal meeting held to discuss the franchise sale or at least 10 business days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

If Byrider Franchising, Inc. does not deliver this Disclosure Document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the appropriate state agency identified on Exhibit M.

The name, principal business address, and telephone number of the franchise seller offering the franchise is as follows: J. Michael Pearce, 12802 Hamilton Crossing Blvd., Carmel, Indiana 46032 (317) 249-3015.

The issuance date of this Franchise Disclosure Document is March 27, 2010.

We authorize the respective state agents identified on Exhibit M to receive service of process for us in the particular states.

I received a Disclosure Document from Byrider Franchising, Inc. dated as of March 27, 2010, that included the following Exhibits:

- |           |                                                                                    |
|-----------|------------------------------------------------------------------------------------|
| Exhibit A | Financial Statements                                                               |
| Exhibit B | Franchise Agreement                                                                |
| Exhibit C | State Law Addendum                                                                 |
| Exhibit D | Personal Guaranty                                                                  |
| Exhibit E | Area Development Agreement                                                         |
| Exhibit F | Franchise Directory                                                                |
| Exhibit G | Software Services and User Agreement                                               |
| Exhibit H | Operations Manuals' Tables of Contents                                             |
| Exhibit I | Co-Franchisee Agreement                                                            |
| Exhibit J | Addendum to Lease Agreement                                                        |
| Exhibit K | Addendum to Purchase Agreement                                                     |
| Exhibit L | Disclosure Acknowledgment Statement                                                |
| Exhibit M | List of State Agencies/Agent for Service of Process/Effective Dates for Each State |
| Exhibit N | List of Franchisees Who Left the System                                            |

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Date

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Prospective Franchisee [Print Name]

(Date, Sign, and Return to Us)

---

Prospective Franchisee [Signature]

**ITEM 23**

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Date

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Prospective Franchisee [Print Name]

(Date, Sign, and Retain for Your Records)

---

Prospective Franchisee [Signature]