SONIC AUTOMOTIVE INC
Form DEF 14A
July 07, 2009

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a)

of the Securities Exchange Act of 1934

(Amendment No.)

Filed by the Registrant x

Filed by a Party other than the Registrant ¨

Check the appropriate box:

¨ Preliminary Proxy Statement
x Definitive Proxy Statement
¨ Definitive Additional Materials
¨ Soliciting Material Pursuant to §240.14a-12

¨ **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

Sonic Automotive, Inc.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

x No fee required.

¨ Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which the transaction applies:

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(2) Aggregate number of securities to which the transaction applies:

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(3) Per unit price or other underlying value of the transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

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(4) Proposed maximum aggregate value of the transaction:

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(5) Total fee paid:

¨ Fee paid previously with preliminary materials.

¨ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

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(2) Form, Schedule or Registration Statement No.:

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(3) Filing Party:

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(4) Date Filed:

6415 Idlewild Road, Suite 109

Charlotte, North Carolina 28212

July 6, 2009

Dear Stockholder:

You are cordially invited to attend a Special Meeting of Stockholders of Sonic Automotive, Inc. to be held at 10:30 a.m. on Wednesday, August 19, 2009, at Lowe s Motor Speedway, Smith Tower, 600 Room, U.S. Highway 29 North, Concord, North Carolina. We look forward to greeting personally those stockholders who are able to attend.

The accompanying formal Notice of Meeting and Proxy Statement describe the matter scheduled for a vote by stockholders at the meeting.

On May 7, 2009, we issued $85,627,000 in aggregate principal amount of our 6.00% Senior Secured Convertible Notes due 2012 and 860,723 shares of our Class A Common Stock in a private placement to certain holders of our 5.25% Convertible Senior Subordinated Notes due 2009 in satisfaction in full of our obligations to those holders under those notes, which were due on May 7, 2009. In connection with the issuance, we agreed to seek stockholder approval for the issuance of shares of Class A Common Stock upon conversion of the 6.00% Senior Secured Convertible Notes due 2012 at a lower conversion price that is subject to further adjustment in certain circumstances. If this stockholder approval is not obtained, we will be in default under the indenture governing the 6.00% Senior Secured Convertible Notes and of our other debt, lease facilities and operating agreements, which would have a material adverse effect on our business, financial condition, liquidity and operations and raise substantial doubt about our ability to continue as a going concern. If that were to occur, we might be unable to continue our operations, be unable to avoid filing for bankruptcy protection and/or have an involuntary bankruptcy case filed against us.

Whether or not you plan to attend the meeting on August 19, 2009, it is important that your shares be represented. To ensure that your vote will be received and counted, please sign, date and mail the enclosed proxy at your earliest convenience. Your vote is important regardless of the number of shares you own.

Please vote your shares as soon as possible. This is your special meeting, and your participation is important.

On behalf of the Board of Directors

Sincerely,

O. BRUTON SMITH

Chairman and Chief Executive Officer

VOTING YOUR PROXY IS IMPORTANT

PLEASE SIGN AND DATE YOUR PROXY AND RETURN IT PROMPTLY IN THE ENCLOSED ENVELOPE

SONIC AUTOMOTIVE, INC.

NOTICE OF MEETING

Charlotte, NC

July 6, 2009

A Special Meeting of Stockholders of Sonic Automotive, Inc. (Sonic) will be held at Lowe s Motor Speedway, Smith Tower, 600 Room, U.S. Highway 29 North, Concord, North Carolina on Wednesday, August 19, 2009, at 10:30 a.m. (the Special Meeting), for the following purposes as described in the accompanying Proxy Statement.

1. Approval of the issuance of shares of Class A Common Stock upon conversion of our 6.00% Senior Secured Convertible Notes due 2012 at the Conversion Price; and

2. To transact such other business as may properly come before the meeting.

Only holders of record of Sonic s Class A Common Stock and Class B Common Stock (collectively, the Voting Stock) at the close of business on July 10, 2009 will be entitled to notice of, and to vote at, the Special Meeting.

Your vote is important. Whether or not you plan to attend the Special Meeting, you are urged to complete, sign, date and return the enclosed proxy promptly in the envelope provided. Returning your proxy does not deprive you of your right to attend the Special Meeting and to vote your shares in person.

STEPHEN K. COSS

Senior Vice President, General Counsel and Secretary

Important Note: To vote shares of Voting Stock at the Special Meeting (other than in person at the meeting), a stockholder must return a proxy. The return envelope enclosed with the proxy card requires no postage if mailed in the United States of America.

SONIC AUTOMOTIVE, INC.

PROXY STATEMENT

July 6, 2009

GENERAL

Introduction

The Special Meeting of Stockholders of Sonic Automotive, Inc. (Sonic or the Company) will be held on August 19, 2009 at 10:30 a.m., at Lowe s Motor Speedway, Smith Tower, 600 Room, U.S. Highway 29 North, Concord, North Carolina (the Special Meeting), for the purposes set forth in the accompanying notice. Directions to attend the Special Meeting, where you may vote in person, can be found at the following weblink: https://www.lowesmotorspeedway.com/visitors_guide/area_map/. This Proxy Statement and form of proxy are furnished to stockholders in connection with the solicitation by the Board of Directors of proxies to be used at the Special Meeting, and at any and all adjournments thereof, and are first being sent to stockholders on or about July 15, 2009.

What am I voting on?

You are voting on a proposal to approve the issuance of shares of our Class A Common Stock (the Class A Common Stock) upon conversion of our 6.00% Senior Secured Convertible Notes due 2012 (the notes) at a lower conversion price of $4.00 (*i.e.*, a conversion rate of 250 shares per $1,000 principal amount of the notes), which conversion price is subject to further reduction for certain events as set forth in the indenture governing the notes and under the heading Description of Notes Conversion Rights set forth herein (the Proposal). We refer to the lower conversion price of $4.00 as reduced from time to time under the terms of the indenture as the Conversion Price . We recently issued $85,627,000 aggregate principal amount of the notes and 860,723 shares of our Class A Common Stock in a private placement to certain holders of our 5.25% Convertible Senior Subordinated Notes due May 7, 2009 (the 5.25% Convertible Notes) in satisfaction in full of our obligations to those holders under the 5.25% Convertible Notes. We can redeem the notes at any time prior to May 1, 2010 at a redemption price equal to 100% of the principal amount of the notes to be redeemed, from May 1, 2010 to April 30, 2011 at a redemption price equal to 106% of the principal amount of notes redeemed, and at any time thereafter at a redemption price equal to 112% of the principal amount of the notes to be redeemed, in each case including accrued and unpaid interest.

As more fully described below under Proposal 1 Indenture , the Proposal is seeking stockholder approval of the issuance of all shares issuable upon conversion at the Conversion Price of the aggregate principal amount of all notes issued under the indenture, including the Series A notes issuable upon conversion of the Series B notes into Series A notes.

The board of directors currently knows of no other business that will be presented for consideration at the Special Meeting. In the event that any matters other than those referred to in the accompanying Notice of Meeting should properly come before and be considered at the Special Meeting, it is intended that proxies in the accompanying form will be voted thereon in accordance with the judgment of the person or persons voting such proxies.

Does the board of directors recommend that I vote FOR the Proposal?

Yes. The board of directors recommends voting FOR the Proposal.

Why is stockholder approval being sought for the issuance of our Class A Common Stock upon the conversion of the notes?

Since our Class A Common Stock is listed on the New York Stock Exchange (the NYSE), we are subject to the NYSE rules and regulations. NYSE Listed Company Manual Section 312.03(c) requires stockholder approval prior to the issuance of common stock or securities convertible into shares of common stock in any transaction or series of transactions if (i) the shares of common stock have, or will have upon issuance, voting power equal to or in excess of 20% of the voting power outstanding before the issuance of the common stock or securities convertible into common stock or (ii) the number of

shares of common stock to be issued is, or will upon issuance, equal to or in excess of 20% of the number of shares of common stock outstanding before the issuance of the common stock or securities convertible into common stock. We are seeking stockholder approval of the issuance of our Class A Common Stock upon conversion of the notes at the Conversion Price to comply with the NYSE rules and regulations and to comply with the requirement in the indenture governing the notes to seek such stockholder approval or be in default.

The issuance of the notes did not require stockholder approval under the NYSE rules and regulations. The urgency of restructuring the 5.25% Convertible Notes prior to maturity did not allow us to obtain stockholder approval prior to the issuance of the notes. In addition, the staff of the NYSE advised us that they did not believe we could avail ourselves of the exception to the stockholder approval rule provided in the NYSE Listed Company Manual. As a result, pursuant to the indenture governing the notes, the conversion price was initially set at a level that would not require stockholder approval under the NYSE rules and regulations until we had obtained stockholder approval. In connection with the issuance of the notes, we agreed to seek stockholder approval for the issuance of shares of our Class A Common Stock upon conversion of the notes at the Conversion Price. The NYSE stockholder approval requirement is applicable because after the adjustment in the conversion price, the number of shares of our Class A Common Stock issuable upon conversion of the notes would exceed 20% of the number of shares of our common stock outstanding before the issuance of the notes.

What happens if stockholders do not approve the Proposal?

If stockholders do not approve the Proposal, we will be in default under the indenture governing the notes. This default will cause the notes to be immediately due and payable. Such a default would also cause cross-defaults on our other debt, lease facilities and operating agreements, which would have a material adverse effect on our business, financial condition, liquidity and operations and raise substantial doubt about our ability to continue as a going concern. As a result, we might be unable to continue our operations, be unable to avoid filing for bankruptcy protection and/or have an involuntary bankruptcy case filed against us.

Who is entitled to vote at the Special Meeting?

Only holders of record of Sonic s Class A Common Stock and Class B Common Stock (the Class B Common Stock and, together with the Class A Common Stock, the Common Stock or Voting Stock) at the close of business on July 10, 2009 (the Record Date) will be entitled to notice of, and to vote at, the Special Meeting.

Sonic currently has authorized under its Amended and Restated Certificate of Incorporation 100,000,000 shares of Class A Common Stock, of which 29,567,119 shares will be outstanding as of the Record Date and are entitled to be voted at the Special Meeting, and 30,000,000 shares of Class B Common Stock, of which 12,029,375 shares will be outstanding as of the Record Date and are entitled to be voted at the Special Meeting. At the Special Meeting, holders of Class A Common Stock will have one vote per share, and holders of Class B Common Stock will have ten votes per share. All outstanding shares of Voting Stock are entitled to vote as a single class on the Proposal.

How may I vote?

Holders entitled to vote may vote their shares by proxy or in person at the Special Meeting. Proxies in the accompanying form, properly executed and duly returned and not revoked, will be voted at the Special Meeting, including adjournments. Where a specification is made by means of the ballot provided in the proxies regarding the Proposal, such proxies will be voted in accordance with the specification. If no specification is made, proxies will be voted in favor of the Proposal. Proxies will be voted in the discretion of the proxy holders on any other business as may properly come before the Special Meeting. Proxies should be sent to American Stock Transfer & Trust Company, 59 Maiden

Lane, New York, New York 10038.

May I change my vote or revoke my proxy after I return my proxy card?

Yes. Stockholders who execute proxies may revoke or change them at any time before they are exercised by delivering a written notice to Stephen K. Coss, the Senior Vice President, General Counsel and Secretary of Sonic, either at the Special Meeting or prior to the meeting date at Sonic s principal executive offices at 6415 Idlewild Road, Suite 109, Charlotte, North Carolina 28212, by executing and delivering a later-dated proxy, or by attending the Special Meeting and voting in person.

What vote is required to approve the Proposal?

A quorum being present, the Proposal will become effective if a majority of the votes cast by shares entitled to vote on the Proposal are cast in favor thereof.

Broker non-votes occur when nominees, such as brokers and banks, holding shares on behalf of street name owners do not receive voting instructions from those owners regarding a matter and do not have discretionary authority to vote on the matter under NYSE rules. Those rules allow nominees to vote in their discretion on routine matters, such as the election of directors and the ratification of the appointment of independent registered public accountants, even if they do not receive voting instructions from the street name owner. On non-routine matters, such as the Proposal, nominees cannot vote unless they receive instructions from the street name owner. The failure to receive such instructions as to a non-routine matter results in a broker non-vote. Broker non-votes and abstentions will be counted to determine a quorum, but will not be counted as votes for or against any proposal.

Who bears the costs of the solicitation of proxies?

Sonic will pay the cost of solicitation of proxies, including the cost of assembling and mailing this Proxy Statement and the enclosed materials. In addition to the use of the mails, proxies may be solicited personally or by telephone or email by corporate officers and employees of Sonic without additional compensation. Sonic intends to request brokers and banks holding stock in their names or in the names of nominees to solicit proxies from their customers who own our stock, where applicable, and will reimburse them for their reasonable expenses of mailing proxy materials to their customers.

PROPOSAL 1

APPROVAL OF THE ISSUANCE OF SHARES OF CLASS A COMMON STOCK UPON CONVERSION OF 6.00% SENIOR SECURED CONVERTIBLE NOTES

Background

On December 31, 2008, we had $1.9 billion in total outstanding indebtedness including, but not limited to, approximately $105.3 million in principal outstanding related to our 5.25% Convertible Notes, $70.8 million under our 2006 revolving credit sub-facility that matures in February 2010, $160.0 million in principal outstanding related to our 4.25% convertible senior subordinated notes due 2015 and redeemable at the holder s option on November 30, 2010 (the 4.25% Convertible Notes) and $275.0 million in principal outstanding related to our 8.625% senior subordinated notes due August 2013.

On February 11, 2009, we announced that we hired Moelis & Company (Moelis) as financial advisor to assist us in evaluating alternatives to enhance liquidity and address our debt obligations coming due in 2009 and 2010. This comprehensive evaluation involved, among other things, restructuring the 5.25% Convertible Notes and/or the 4.25% Convertible Notes and amending or refinancing the 2006 revolving credit sub-facility to avoid potential defaults under that facility and permit the restructuring of our other outstanding debt obligations. If we did not refinance or repay the 5.25% Convertible Notes on or before May 7, 2009, we would have been in default under such debt and our other debt, lease facilities and operating agreements, which would have had a material adverse effect on our business, financial condition, liquidity and operations and raised substantial doubt about our ability to continue as a going concern. In such a case, we might not have been able to continue our operations and we may have been unable to avoid filing for bankruptcy protection and/or have had an involuntary bankruptcy case filed

against us.

After exploring and considering a number of potential financing alternatives and taking into consideration the downturn in economic conditions and the retail automotive industry and the volatility in the financial markets, our board of directors determined that the private placement of notes and Class A Common Stock to certain holders of our 5.25% Convertible Notes in satisfaction of our obligations to those holders under the 5.25% Convertible Notes was the best available transaction to address our capital needs on a timely basis and was in our and our stockholders best interests.

In early March 2009, Moelis, on our behalf, separately approached three large institutional holders (who, in the aggregate, held approximately 83% of the aggregate outstanding principal amount of the 5.25% Convertible Notes) regarding a possible exchange transaction involving the 5.25% Convertible Notes. Two of these holders (who together held

approximately 73% of the aggregate outstanding principal amount of the 5.25% Convertible Notes) indicated a willingness to negotiate a possible exchange transaction and entered into confidentiality agreements with us before discussing possible terms of a transaction. The third holder chose not to participate in the discussions until later in the negotiations.

We and the two large institutional holders continued discussions of proposed terms through March. These discussions centered on the desire of holders of 5.25% Convertible Notes to be repaid in cash as soon as possible, including provisions that would incentivize or require us to repay the notes prior to their maturity. These discussions resulted in an understanding in mid-April between the two large institutional holders and us on general principles of certain terms of a proposed exchange transaction. Following this understanding on general principles of certain terms, we and Moelis reached out to certain other holders to execute confidentiality agreements and negotiate the specific terms of a possible exchange transaction. In total, eleven holders (including certain holders on behalf of multiple funds) representing approximately 92.7% of the aggregate outstanding principal amount of the 5.25% Convertible Notes signed confidentiality agreements and received offers to negotiate the terms of a possible exchange transaction.

During April, we and our advisors and certain holders of 5.25% Convertible Notes and their advisors negotiated specific terms relating to the notes, including among other things the conversion price, redemption and repurchase provisions, the security package, intercreditor arrangements and covenants (including the use of asset sale proceeds, among others) and many other terms of the possible exchange transaction. During the negotiations, the holders negotiated for various redemption provisions and forms of consideration in addition to the notes. One form of consideration the holders sought and that we ultimately agreed to as a portion of the consideration was shares of our Class A Common Stock. The number of shares of Class A Common Stock available for the exchange transaction and the valuation of such shares in the exchange transaction was also negotiated. As a result of these negotiations, each holder electing to participate in the exchange transaction had the option to receive notes or a combination of notes and shares of our Class A Common Stock in exchange for such holder s 5.25% Convertible Notes.

All of these extensive negotiations continued among the parties until May 4, 2009 when seven holders (including certain holders of multiple funds) representing in an aggregate amount of approximately 85% of the aggregate outstanding principal of our 5.25% Convertible Notes elected to participate in the exchange transaction and executed subscription agreements for approximately $85.6 million of notes and 860,723 shares of Class A Common Stock.

On May 7, 2009, we issued the notes and 860,723 shares of Class A Common Stock to certain holders of our 5.25% Convertible Notes in satisfaction in full of their 5.25% Convertible Notes and repaid the remaining $15,676,000 million in aggregate principal amount of the 5.25% Convertible Notes in cash at maturity. Because of the NYSE rule described below and the limited timeframe we had to consummate the transaction, it was necessary to structure the notes with a conversion price above the threshold that would require stockholder approval until we could obtain the necessary stockholder approval to issue Class A Common Stock upon conversion of the notes at the Conversion Price. We agreed to seek such stockholder approval following the issuance of the notes.

If stockholders do not approve the Proposal, we will be in default under the indenture governing the notes. This default would cause the notes to be immediately due and payable. Such a default would cause cross-defaults on our other debt, lease facilities and operating agreements, which would have a material adverse effect on our business, financial condition, liquidity and operations and raise substantial doubt about our ability to continue as a going concern. As a result, we might be unable to continue our operations, be unable to avoid filing for bankruptcy protection and/or have an involuntary bankruptcy case filed against us.

For a more complete description of the transaction in which the notes were issued, please see our Current Reports on Form 8-K filed on May 5, 2009 and May 13, 2009.

NYSE Stockholder Approval Requirement

Because our Class A Common Stock is listed on the NYSE, we are subject to NYSE rules and regulations. NYSE Listed Company Manual Section 312.03(c) requires stockholder approval prior to the issuance of common stock or securities convertible into shares of common stock in any transaction or series of transactions if (i) the shares of common stock has, or will have upon issuance, voting power equal to or in excess of 20% of the voting power outstanding before the issuance of the common stock or securities convertible into common stock or (ii) the number of shares of common stock to be issued is, or will upon issuance, equal to or in excess of 20% of the number of shares of common stock outstanding before the issuance of the common stock or securities convertible into common stock.

The issuance of the notes did not require stockholder approval under the NYSE rules and regulations because, pursuant to the indenture governing the notes, the conversion price was initially set at a level that would not require stockholder approval until we obtained such stockholder approval. In connection with the issuance of the notes, we agreed to seek stockholder approval of the issuance of shares of Class A Common Stock upon conversion of the notes at the Conversion Price. The NYSE stockholder approval requirement is applicable because after the adjustment in the conversion price, the number of shares of our Class A Common Stock issuable upon conversion of the notes would exceed 20% of the number of shares of our common stock outstanding immediately prior to the issuance of the notes. As a result, we are seeking stockholder approval of the issuance of our Class A Common Stock upon conversion of the notes at the Conversion Price to comply with the NYSE rules and regulations and to comply with the indenture governing the notes.

Indenture

The notes were issued under an indenture dated May 7, 2009, which is included herein as Appendix A. In connection with the issuance of the notes, in the indenture, we agreed to seek stockholder approval of the issuance of shares of Class A Common Stock upon the conversion of the notes at the Conversion Price. For a more complete description of the indenture governing the notes and the rights of the holders of the notes, please see the section titled Description of Notes contained herein.

As indicated in Description of Notes , the notes were issued in two series, Series A and Series B. At the time of issuance, each series had different conversion prices. If the Proposal is approved, the Series A notes will have a lower conversion price than the Series B notes. However, the Series B notes are convertible into Series A notes at the Series B noteholders option at any time after the registration statement for Series A notes becomes effective. We expect that Series B notes would be converted into Series A notes prior to any conversion into shares of our Class A Common Stock. For purposes of the Proposal, the notes include the aggregate principal amount of notes that were issued under the indenture. We are therefore seeking stockholder approval of the issuance of all shares issuable upon conversion of all the notes at the Conversion Price, including those Series A notes issuable upon conversion of the Series B notes into Series A notes.

Registration Rights

At the time we issued the notes, we and the holders of the notes entered into a registration rights agreement relating to the notes and the shares issuable upon conversion of the notes, pursuant to which we agreed, at our cost, for the benefit of the holders of the notes, to cause the notes and the shares issuable upon conversion of the notes, to be registered under the Securities Act of 1933, as amended (the 1933 Act). To accomplish this, we agreed to:

- file a shelf registration statement pursuant to Rule 415 of the 1933 Act on or before July 6, 2009; and
- use our reasonable best efforts to cause the shelf registration statement to be declared effective by the SEC on or before November 7, 2009.

If (1) we fail to meet these deadlines; (2) after the shelf registration statement is filed and declared effective until the notes and the shares issuable upon conversion of the notes covered by such shelf registration statement have been resold pursuant to such shelf registration statement, the shelf registration statement ceases to be effective or fails to be usable for its intended purpose (subject to certain exceptions) except during a blackout period; or (3) blackout periods exceed an aggregate of 45 days in any calendar year, then additional interest will accrue on the aggregate principal amount of notes (in addition to the stated interest on the notes) from and including the date on which any such registration default has occurred to but excluding the date on which all registration defaults have been cured. The additional interest will initially be 0.25% per-annum of the aggregate principal of the notes with respect to the first 45-day period during which a registration default shall have occurred and be continuing. From the 46th day and ending on the 90th day following the registration default, the additional interest will be

0.75% per annum and commencing on the 91st day following the registration default the additional interest will be 1.00% per annum.

We also granted registration rights for shares of Class A Common Stock issued simultaneously with the issuance of the notes.

Consequences if Stockholders Approve the Proposal

The notes have certain conversion rights as set forth below in Description of Notes Conversion Rights. The number of shares of our Class A Common Stock issuable upon conversion of the notes may increase as a result of the formulas for calculating any further adjustments to the conversion rate. See Description of Notes Conversion Rights . If stockholders

approve the Proposal, we will be in compliance with the applicable covenant in the indenture governing the notes. In addition, we will be permitted to issue upon conversion of the notes a number of shares of our common stock that exceeds 20% of the outstanding Class A Common Stock at the time of the issuance of the notes. As a result, conversion of the notes could result in substantial dilution of the voting power and a significant decrease in the ownership percentage of our existing stockholders.

The rights and privileges associated with the shares of our Class A Common Stock issued upon conversion of the notes will be identical to the rights and privileges associated with the common stock held by existing holders of our Class A Common Stock, including voting rights. As discussed above, holders of the notes have certain registration rights with respect to (i) their notes, (ii) their shares of our Class A Common Stock issuable upon conversion of the notes and (iii) other shares of our Class A Common Stock obtained by them in the private placement, if any. Any such shares that are resold pursuant to an effective registration statement will be freely transferable without restriction under the 1933 Act. These sales may materially and adversely impact the market price of our Class A Common Stock if, for example, large quantities of our Class A Common Stock are issued upon conversion of the notes and sold into the market.

Consequences if Stockholders Do Not Approve the Proposal

If stockholders do not approve the Proposal, we will be in default under the indenture governing the notes. This default will cause the notes to be immediately due and payable. Such a default would cause cross-defaults on our other debt, lease facilities and operating agreements, which would have a material adverse effect on our business, financial condition, liquidity and operations and raise substantial doubt about our ability to continue as a going concern. As a result, we might be unable to continue our operations, be unable to avoid filing for bankruptcy protection and/or have an involuntary bankruptcy case filed against us.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR PROPOSAL 1.

DESCRIPTION OF NOTES

We issued the notes pursuant to an indenture dated as of May 7, 2009 between us and U.S. Bank National Association, as trustee. We refer to the indenture, as it may be supplemented from time to time, as the Indenture. The terms of the notes include those stated in the Indenture and, when the Trust Indenture Act of 1939, as amended (the Trust Indenture Act) becomes applicable, those made a part of the Indenture by reference to the Trust Indenture Act. The Trust Indenture Act will not apply to the Indenture until the notes are registered under the securities laws. For definitions of certain capitalized terms used in this Description of Notes, see Certain Definitions.

The following summary does not purport to be complete, and is subject to, and is qualified in its entirety by reference to, all of the provisions of the notes and the Indenture. As used in this description, all references to Sonic, the Company or to we, us or our mean Sonic Automotive, In excluding, unless otherwise expressly stated or the context otherwise requires, its subsidiaries.

General

The notes:

- were issued only in registered form without coupons in denominations of $1,000 and any integral multiple of $1,000 above that amount;
- were issued in two series, Series A and Series B;
- are limited to the aggregate principal amount issued on the date of the Indenture;
- mature on May 15, 2012;
- accrue interest at a rate of 6.0% per year from May 7, 2009 payable semiannually in arrears on May 1 and November 1 of each year, beginning November 1, 2009;
- will be convertible on the terms described herein;
- are guaranteed by the Guarantors;
- are equal in right of payment to all existing and future Senior Indebtedness of the Company;
- are secured by a Second Priority Lien on the Company s assets that are collateral for the First Priority Liens, subject to certain exceptions specified in the Security Documents and subject to Permitted Liens;

are senior in right of payment to all existing and future subordinated Indebtedness of the Company; and

are, with respect to any Series B note, eligible for exchange to a Series A note, at the election of any Series B note holder following the date that the Registration Statement is declared effective.

Each Guarantee:

is equal in right of payment to all existing and future Senior Indebtedness of each Guarantor;

is secured by a Second Priority Lien on the Guarantor s assets that are collateral for the First Priority Liens, subject to certain exceptions specified in the Security Documents and to Permitted Liens; and

is senior in right of payment to all existing and future subordinated Indebtedness of each Guarantor.

The Series A notes and Series B notes are separate series of notes, but are treated as a single class under the Indenture, except as otherwise set forth in the Indenture. The Series A notes rank *pari passu* in right of payment with the Series B notes. Interest will be paid to the person in whose name a note is registered at the close of business on the April 15 or October 15, as the case may be, immediately preceding the relevant interest payment date. Interest on the notes will be computed on the basis of a 360-day year composed of twelve 30-day months. Interest will cease to accrue on a note upon its maturity, conversion, redemption or repurchase by us on the terms and subject to the conditions specified in the Indenture.

If any interest payment date, maturity date, redemption date or purchase date of a note falls on a day that is not a business day, the required payment of principal and interest will be made on the next succeeding business day as if made on the date that the payment was due and no interest will accrue on that payment for the period from and after that interest payment date, maturity date, redemption date or purchase date, as the case may be, to the date of that payment on the next succeeding business day.

The notes are redeemable prior to maturity at any time, as described below under Redemption of Notes at Our Option. Principal of and interest on the notes will be payable at the office of the paying agent, which initially will be an office or agency of the trustee, or an office or agency maintained for such purpose, in the Borough of Manhattan, The City of New York. If certain conditions have been satisfied, the notes may be presented for conversion at the office of the conversion agent, and for registration of transfer or exchange at the office of the registrar, each such agent initially being the trustee. No service charge will be made for any registration of transfer or exchange of notes, but we may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Maturity, conversion, purchase by us at the option of a holder or redemption of a note will cause interest to cease to accrue on such note. We may not reissue a note that has matured or been converted, purchased by us at the option of a holder, redeemed or otherwise cancelled, except for registration of transfer, exchange or replacement of such note.

Issuance and Methods of Receiving Payments on the Notes

Principal of, premium, if any, and interest on the notes will be payable, and the notes will be exchangeable and transferable, at the office or agency of the Company in The City of New York maintained for such purposes (which initially will be the corporate trust office of the trustee); *provided*, *however*, that payment of interest may be made at the option of the Company by check mailed to the Person entitled thereto as shown on the security register. The notes will be issued only in fully registered form without coupons, in denominations of $1,000 and any integral multiple of $1,000 above that amount.

Ranking of Notes

The notes are general secured obligations of the Company and rank senior in right of payment to all existing and future Indebtedness of the Company that is, by its terms, expressly subordinated in right of payment to the notes and *pari passu* in right of payment with all existing and future Indebtedness of the Company that is not so subordinated. The notes are effectively senior to all unsecured Indebtedness to the extent of the value of the Collateral referred to below and effectively junior to any obligations of the Company that are either (i) secured by a Lien on the Collateral (as defined below) that is senior or prior to the Liens securing the notes, including the First Priority Liens securing obligations under the Credit Facility, and potentially any Permitted Liens, or (ii) secured by assets that are not part of the Collateral securing the notes, in each case to the extent of the value of the assets securing such obligations.

The Indenture does not treat (i) unsecured Indebtedness as subordinated or junior to secured Indebtedness merely because it is unsecured or (ii) Senior Indebtedness as subordinated or junior to any other Senior Indebtedness merely because it has a junior priority with respect to the same collateral.

Security

The notes, the Guarantees and the Indenture Obligations are secured by Second Priority Liens granted by the Company, the existing Guarantors and any future Guarantor on the same collateral that secures obligations under the Credit Facility on a first priority basis (which consists of all assets of the Company and the Guarantors (whether now owned or hereafter arising or acquired)) other than as described below (the Collateral) and subject to certain Permitted Liens and encumbrances described in the Security Documents.

The Collateral does not include (collectively, Excluded Property): (A) any Franchise Agreement (as defined in the Credit Facility as of the date hereof), Framework Agreement (as defined in the Credit Facility as of the date hereof) or similar manufacturer agreement to the extent that any such Franchise Agreement (as defined in the Credit Facility as of the date hereof), Framework Agreement (as defined in the Credit Facility as of the date hereof) or similar manufacturer agreement is not assignable or capable of being encumbered as a matter of law or by the terms applicable thereto (unless any such restriction on assignment or encumbrance is ineffective under the UCC or other applicable law), without the consent of the applicable party thereto, (B) the Restricted Equity Interests (as defined in the Security Agreement (Escrowed Equity)) to the extent that applicable law or terms of the applicable Franchise Agreement (as defined in the Credit Facility as of the date hereof), Framework Agreement (as defined in the Credit Facility as of the date hereof) or similar manufacturer agreement would prohibit the pledge or encumbrance thereof (unless any such restriction on assignment or encumbrance is ineffective under the UCC or other applicable law), without the consent of the applicable party thereto, (C) any property financed by manufacturer-affiliated finance companies pursuant to an Inventory Facility permitted to be incurred under the Indenture and

that secures such obligations on a first priority basis, (D) any pledges of stock or other equity interests of a Guarantor to the extent that Rule 3-16 of Regulation S-X under the Securities Act requires or would require (or is replaced with another rule or regulation, or any other law, rule or regulation is adopted, that would require) the filing with the SEC of separate financial statements of such Guarantor that are not otherwise required to be filed, but only to the extent necessary to not be subject to such requirement, (E) equity interests in Unrestricted Subsidiaries (subject to future grants under the terms of the Indenture), (F) any pledge of more than 65% of the total outstanding voting stock issued by any Subsidiary organized under the laws of a jurisdiction other than the United States, (G) any Permitted Real Estate Indebtedness Collateral (as defined on Exhibit A to the Security Agreement), (H) any other real property, or (I) any other assets excluded from, or that (for any other reason) are not included in, the Collateral securing the Credit Facility from time to time after the date hereof; provided, that (i) if any of the foregoing property described in clauses (A) through (I) ceases to be Excluded Property by its terms, such property shall no longer constitute Excluded Property and shall automatically be deemed to be Collateral under this Security Agreement and each other Note Document, as applicable, (ii) if any material property becomes Excluded Property by the operation of clause (I) above, the Company shall promptly notify the Collateral Agent of such property and (iii) if any real property ever secures the Credit Facility on a first-priority basis, such real property shall be Collateral and the relevant Grantor shall cause such real property to secure the Secured Obligations (as defined in the Security Agreement) on a second-priority basis with mortgage, real estate trust deed or similar instruments of Lien containing terms no more restrictive to the relevant Grantor than in the first-priority basis.

As soon as practicable after the acquisition thereof and as required in accordance with the Security Documents, the Company and the Guarantors, as applicable, will provide a First Priority Lien in favor of the Administrative Agent and a Second Priority Lien in favor of the Collateral Agent (and deliver certain certificates and opinions in respect thereof as required by the Indenture or the Security Documents) with respect to (1) property (other than Excluded Property) that is acquired by the Company or a Guarantor, (2) all property that is no longer Excluded Property and is not automatically subject to a perfected security interest under the Security Documents and (3) if a Restricted Subsidiary becomes a Guarantor, such new Guarantor s property (other than Excluded Property).

Certain of the obligations under our Credit Facility (including without limitation, obligations owed to lenders and their affiliates in connection with swap agreements and cash management arrangements) and the guarantees thereof by each of the Guarantors, are secured by a First Priority Lien on the Collateral. As set out in more detail below, upon an enforcement event or insolvency proceeding, proceeds from the Collateral will be applied first to satisfy such obligations under the Credit Facility in full and then to satisfy obligations on the notes. In addition, the Indenture permits the Company and the Guarantors to create additional Liens under specified circumstances, including certain additional senior Liens on the Collateral. See the definition of Permitted Liens.

The Collateral is pledged to (1) the administrative agent under the Credit Facility (together with any successor, the Administrative Agent), on a first priority basis, for the benefit of the Secured Parties (as defined in the security documents relating to the Revolving Credit Facility) and (2) U.S. Bank National Association, as collateral agent (together with any successor, the Collateral Agent), on a second priority basis, for the benefit of the trustee and the holders of the notes. The Second Priority Lien Obligations constitute claims separate and apart from (and of a different class from) the First Priority Lien Obligations and the Second Priority Liens are junior to the First Priority Liens as to the Collateral.

Control Over Collateral and Enforcement of Liens

The Intercreditor Agreement provides that, while any First Priority Lien Obligations (or any commitments or letters of credit in respect thereof) are outstanding, the holders of the First Priority Liens will control at all times all remedies and other actions related to the Collateral and the Second Priority Liens will not entitle the Collateral Agent, the trustee or the holders of any notes to take any action whatsoever (other than Second Lien Permitted Actions (as defined in the Intercreditor Agreement) limited actions to preserve and protect the Second Priority Liens that do not impair the First Priority Liens and certain other limited exceptions) with respect to the Collateral. As a result, while any First Priority Lien Obligations (or any commitments or letters of credit in respect thereof) are outstanding, none of the Collateral Agent, the trustee or the holders of the notes will be able to force a sale of the Collateral or otherwise exercise remedies normally available to secured creditors without the concurrence of the holders of the First Priority Liens or challenge any decisions in respect thereof by the holders of the First Priority Liens; provided, that once the First Lien Agent takes Enforcement Action (as defined the Intercreditor Agreement), the Second Lien Agent may take Enforcement Action.

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Proceeds realized by the Administrative Agent or the Collateral Agent upon the exercise of remedies with respect to the Collateral or in an insolvency proceeding will be applied:

first, to amounts owing to the holders of the First Priority Liens in accordance with the terms of the First Priority Lien Obligations until they are paid in full;

second, ratably to amounts owing to the holders of the notes in accordance with the terms of the Indenture; and

third, to the Company and/or other persons entitled thereto.

Payments by the Company in accordance with the Indenture, including the application of Net Cash Proceeds of any Asset Sale, are not intended to be subject to this priority of payments provision.

The Collateral was not been appraised in connection with the offering of the notes. The fair market value of the Collateral is subject to fluctuations based on factors that include, among others, the condition of the automotive retail industry, our ability to implement our business strategy, the ability to sell the Collateral in an orderly sale, general economic conditions, the availability of buyers for the Collateral and similar factors. The amount to be received upon a sale of the Collateral following an Event of Default would be dependent on numerous factors, including but not limited to the actual fair market value of the Collateral at such time and the timing and the manner of the sale. By its nature, portions of the Collateral may be illiquid and may have no readily ascertainable market value. Likewise, there can be no assurance that the Collateral will be saleable, or, if saleable, that there will not be substantial delays in its liquidation. In the event of a foreclosure, liquidation, bankruptcy or similar proceeding, the proceeds from any sale or liquidation of the Collateral may not be sufficient to pay our Second Priority Lien Obligations. In addition, the fact that the lenders under the Credit Facility (and the lenders and affiliates that hold obligations under swap agreements and cash management arrangements) will receive proceeds from foreclosure on the Collateral before holders of the notes, and that other Persons may have Permitted Liens in respect of assets that are part of (or would be but for their exclusion from) the Collateral could have a material adverse effect on the amount that would be realized upon a liquidation of the Collateral. Accordingly, there can be no assurance that proceeds of any sale of the Collateral pursuant to the Indenture and the related Security Documents following an Event of Default would be sufficient to satisfy, or would not be substantially less than, all amounts due on the notes.

If the proceeds of any of the Collateral were not sufficient to repay all amounts due on the notes, the holders of the notes (to the extent not repaid from the proceeds of the sale of the Collateral) would have only an unsecured claim against the Company and the Guarantors. To the extent that Liens (including Permitted Liens), rights or easements granted to third parties encumber assets located on property owned by the Company or the Guarantors, including the Collateral, such third parties may exercise rights and remedies with respect to the property subject to such Liens that could adversely affect the value of the Collateral and the ability of the Collateral Agent, the trustee or the holders of the notes to realize or foreclose on Collateral.

Release of Liens

The Security Documents and the Indenture provide that the Second Priority Liens securing the Guarantee of any Guarantor will be automatically released when such Guarantor s Guarantee is released in accordance with the terms of the Indenture. In addition, the Second Priority Liens securing the notes will be released in whole (a) upon payment in full of principal, premium, if any, interest and all other Indenture Obligations (other than contingent indemnification obligations not then due) and (b) with the consent of the holders of 75% of the outstanding notes including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the notes. Furthermore, the Second Priority Liens will be released in part with respect to any asset constituting Collateral in connection with any disposition of such Collateral to any Person other than the Company or any of the Restricted Subsidiaries that is permitted by the Indenture.

To the extent applicable, and solely to the extent the notes are registered with the Commission, the Company will comply with Section 313(b) of the Trust Indenture Act, relating to reports, and Section 314(d) of the Trust Indenture Act, relating to the release of property and to the substitution therefor of any property to be pledged as Collateral for the notes. Any certificate or opinion required by Section 314(d) of the Trust Indenture Act may be made by an officer of the Company except in cases where Section 314(d) requires that such certificate or opinion be made by an independent engineer, appraiser or other expert, who shall be reasonably satisfactory to the trustee. Notwithstanding anything to the contrary herein, the Company and the Guarantors will not be required to comply with all or any portion of Section 314(d) of the Trust Indenture

Act if they determine, in good faith based on advice of counsel (which may be internal counsel), that under the terms of that section and/or any interpretation or guidance as to the meaning thereof of the SEC and its staff, including no action letters or exemptive orders, all or any portion of Section 314(d) of the Trust Indenture Act is inapplicable to the released Collateral. Without limiting the generality of the foregoing, certain no-action letters issued by the SEC have permitted an indenture qualified under the Trust Indenture Act to contain provisions permitting the release of collateral from Liens under such indenture in the ordinary course of an issuer s business without requiring the issuer to provide certificates and other documents under Section 314(d) of the Trust Indenture Act. In addition, under interpretations provided by the SEC, to the extent that a release of a Lien is made without the need for consent by the holders of the notes or the trustee, the provisions of Section 314(d) may be inapplicable to the release.

Intercreditor Agreement

The Company, the Guarantors, the Collateral Agent, the trustee and the Administrative Agent under the Credit Facility (including in its capacity as collateral agent for the First Priority Liens that secure obligations under the Credit Facility) entered into the Intercreditor Agreement which established the second priority status of the Second Priority Liens. In addition to the provisions described above with respect to control of remedies, release of Collateral and amendments to the Security Documents, the Intercreditor Agreement also imposes certain other customary restrictions and agreements, including the restrictions and agreements described below.

Pursuant to the Intercreditor Agreement, the trustee and the holders of the notes agree that the Administrative Agent and the lenders under the Revolving Credit Facility have no fiduciary duties to them in respect of the maintenance or preservation of the Collateral. The Administrative Agent agrees to hold certain possessory collateral as bailee of the Collateral Agent and the trustee and the holders of the notes for purposes of perfecting the Second Priority Liens thereon. In addition, the trustee and the holders of the notes waive any claim against the Administrative Agent and the lenders under the Credit Facility in connection with any actions they may take under the Credit Facility or with respect to the Collateral. They further waive any right to assert, or request the benefit of, any marshalling or similar rights that may otherwise be available to them.

The trustee and the holders of the notes generally agree that if they receive payments from the Collateral in contravention of the application of proceeds provisions of the Intercreditor Agreement, they will turn such payments over to the First Priority Lien Obligation holders.

This summary of the Intercreditor Agreement only summarizes certain terms of the Intercreditor Agreement.

No Impairment of the Security Interests

Neither the Company nor any of the Guarantors are permitted to take any action, or knowingly or negligently omit to take any action, which action or omission is reasonably likely to or would have the result of materially impairing the security interest with respect to the Collateral for the benefit of the trustee and the holders of the notes.

The Indenture provides that any release of Collateral in accordance with the provisions of the Indenture and the Security Documents will not be deemed to impair the security under the Indenture, and that any engineer, appraiser or other expert may rely on such provision in delivering a certificate requesting release so long as all other provisions of the Indenture with respect to such release have been complied with.

Subsidiary Guarantees

Payment of the notes is guaranteed by the Guarantors (as defined below) jointly and severally, fully and unconditionally, on a senior basis. The Guarantors are comprised of all of the guarantors of the Company s 5/8% Senior Subordinated Notes and the Credit Facility on the Issue Date. Substantially all of the Company s operations are conducted through these subsidiaries. In addition, if any Restricted Subsidiary of the Company becomes a guarantor or obligor in respect of any other Indebtedness of the Company or any of the Restricted Subsidiaries, the Company shall cause such Restricted Subsidiary to enter into a supplemental indenture pursuant to which such Restricted Subsidiary shall agree to guarantee the Company s obligations under the notes. If the Company defaults in payment of the principal of, premium, if any, or interest on the notes, each of the Guarantors will be unconditionally, jointly and severally obligated to duly and punctually pay the same.

The obligations of each Guarantor under its Guarantee are limited to the maximum amount which, after (1) giving effect to all other contingent and fixed liabilities of such Guarantor, and (2) giving effect to any collections from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under its Guarantee or pursuant to its contribution obligations under the Indenture, will result in the obligations of such Guarantor under its Guarantee not constituting a fraudulent conveyance or fraudulent transfer under Federal or state law. Each Guarantor that makes a payment or distribution under its Guarantee shall be entitled to a contribution from any other Guarantor in a *pro rata* amount based on the net assets of each Guarantor determined in accordance with GAAP.

Notwithstanding the foregoing, in certain circumstances a Guarantee of a Guarantor may be released pursuant to the provisions of subsection (b) under Certain Covenants *Limitation on Issuances of Guarantees of and Pledges for Indebtedness*. The Company also may, at any time, cause a Restricted Subsidiary to become a Guarantor by executing and delivering a supplemental indenture providing for the guarantee of payment of the notes by such Restricted Subsidiary on the basis provided in the Indenture.

Conversion Rights

On or after August 25, 2011, to (and including) the close of business on the business day immediately preceding the Maturity Date, the holders of (i) Series A Holders may convert notes, in multiples of $1,000 principal amount, into Class A common stock at a price per share of $13.59, or a conversion rate of 73.58 shares per $1,000 principal amount of notes, which was initially equal to the aggregate principal amount of Series A notes and Series B notes on the Issue Date divided by the maximum number of shares that may be issued upon conversion without obtaining shareholder approval under Rule 312.03 of the NYSE Listed Company Manual less (A) 857,616 shares of Class A common stock, and (B) the number of shares of Class A common stock into which the Series B notes may be converted and (ii) Series B Holders may convert notes, in multiples of $1,000 principal amount, into Class A common stock at a price per share of $8.00, or a conversion rate of 125 shares per $1,000 principal amount of notes. With respect to the Series A notes only, upon receipt of (x) shareholder approval for the issuance of the full number of Class A shares issuable upon conversion of the notes at a $4.00 per share conversion price in accordance with the requirements of Rule 312.03 of the NYSE Listed Company Manual or (y) an exemption for such issuance from the NYSE pursuant to Rule 312.05 of the NYSE Listed Company Manual (in each case (x) or (y), NYSE Approval), the conversion price shall be adjusted to be $4.00 per share, or a conversion rate of 250 shares per $1,000 principal amount of notes.

Any Series B note holder may elect to surrender its Series B notes upon its receipt of notice from the Company that the Registration Statement has been declared effective. Any time after receiving such notice, any Series B note holder may provide the Company and Trustee with five (5) Business Days notice of its intent to exchange its Series B notes for Series A notes, at which time the Trustee shall cancel such holder s Series B notes and issue a new Series A note in a like aggregate principal amount, which may be as part of a Global Security.

A holder of a note otherwise entitled to a fractional share will receive cash equal to the applicable portion of the then current sale price of our Class A common stock on the trading day immediately preceding the conversion date. Upon a conversion, we will have the option to deliver cash or a combination of cash and shares of our Class A common stock as described below.

To convert a note into shares of Class A common stock, a holder must:

complete and manually sign a conversion notice, a form of which is on the back of the note, and deliver the conversion notice to the conversion agent;

surrender the note to the conversion agent;

if required by the conversion agent, the trustee or the Company furnish appropriate endorsements and transfer documents; and

if required, pay all transfer or similar taxes.

The date a holder complies with these requirements is the conversion date under the Indenture. The notes will be deemed to have been converted immediately prior to the close of business on the conversion date. If a holder s interest is a

beneficial interest in a global note, in order to convert a holder must comply with the last three requirements listed above and comply with the depositary s procedures for converting a beneficial interest in a global note.

Upon conversion of a note, a holder will receive a cash payment of interest representing accrued and unpaid interest, except if such conversion occurs during the period from the close of business on any regular record date next preceding any interest payment date to the opening of business of such interest payment date. Holders of notes surrendered for conversion during such period will receive the semiannual interest payable on such notes on the corresponding interest payment date notwithstanding the conversion.

The conversion rate will not be adjusted for accrued and unpaid interest. A certificate for the number of full shares of Class A common stock into which any note is converted, together with any cash payment for fractional shares, will be delivered through the conversion agent as soon as practicable following the conversion date.

In lieu of delivery of shares of our Class A common stock upon notice of conversion of any notes (for all or any portion of the notes), we may elect to pay holders surrendering notes an amount in cash per note (or a portion of a note) equal to the average sale price of our Class A common stock for the five consecutive trading days immediately following the date of our notice of our election to deliver cash multiplied by the number of shares of Class A common stock which would have been issued on conversion and in respect of which cash is being delivered in lieu of shares. We will inform the holders through the trustee no later than two business days following the receipt of a conversion notice of our election to deliver shares of our Class A common stock or to pay cash in lieu of delivery of the shares. If we elect to deliver all of such payment in shares of our Class A common stock, the shares will be delivered through the conversion agent no later than the fifth business day following the conversion date. If we elect to pay all or a portion of such payment in cash, the payment, including any delivery of our Class A common stock, will be made to holders surrendering notes no later than the tenth business day following the applicable conversion date. If an Event of Default, as described under Events of Default; Waiver and Notice below (other than a default in a cash payment upon conversion of the notes), has occurred and is continuing, we may not pay cash upon conversion of any notes or portion of a note (other than cash for fractional shares).

With respect to the Series A notes, so long as NYSE Approval has been obtained, if the conversion price of the Permitted Exchange Notes on the Target Date (as defined below) is below Fair Market Value (as defined below), then the per share conversion price of the Series A notes will be adjusted as follows upon issuance of the Permitted Exchange Notes:

$$CP = CP_0 \times \frac{(OS_0+Y)}{(OS_0+X)}$$

where

- CP = the adjusted per share conversion price of the notes;
- CP_0 = the per share conversion price of the notes in effect immediately prior to the Target Date;
- OS_0 = the sum of (i) the number of shares of Class A common stock outstanding immediately prior to the Target Date and (ii) the total number of shares of Class A common stock issuable upon conversion of the notes then outstanding based on the per share conversion price of the notes in effect immediately prior thereto;
- Y = the total number of shares of Class A common stock issuable upon conversion of the Permitted Exchange Notes based on a per share conversion price equal to the Fair Market Value; and
- X = the total number of shares of Class A common stock issuable upon conversion of the Permitted Exchange Notes based on the per share conversion price of the Permitted Exchange Notes at the Target Date.

For purposes of this adjustment:

Target Date means any date prior to the Maturity Date that is the earlier of:

(A) the date the Company initially signs legally binding documentation in respect of the exchange and issuance of the Permitted Exchange Notes (not involving a tender offer as described in clause (B) below), and

(B) the later of (x) the date the Company launches a bona fide tender offer in respect of the 4.25% Convertible Senior Subordinated Notes in connection with the exchange and issuance of the Permitted Exchange Notes, and (y) the date the Company amends the conversion price for the Permitted Exchange Notes specified in such tender offer in connection with the exchange and issuance of the Permitted Exchange Notes.

Fair Market Value shall be equal to the average closing sale price per share of the Company s Class A common stock on the principal exchange on which such shares are listed for the thirty consecutive trading days ending immediately prior to the Target Date, as the case may be.

Notwithstanding the foregoing, if the conversion price of the Permitted Exchange Notes on the Target Date is below Fair Market Value and the conversion price of the Series A notes in effect at such time, then the above adjustment will be of no force and effect and the following adjustment will be the only adjustment that will apply.

With respect to the Series A notes, so long as NYSE Approval has been obtained, if the conversion price of the Permitted Exchange Notes is below the conversion price of the Series A notes in effect at any time and from time to time prior to the Maturity Date, then the per share conversion price of the Series A notes will be adjusted as follows as of such a time:

$$CP = CP_0 \times \frac{(OS_0+Y)}{(OS_0+X)}$$

where

CP	=	the adjusted per share conversion price of the notes;
CP_0	=	the per share conversion price of the notes in effect immediately prior to such occurrence;
OS_0	=	the sum of (i) the number of shares of Class A common stock outstanding immediately before such occurrence and (ii) the total number of shares of Class A common stock issuable upon conversion of the notes then outstanding based on the per share conversion price of the notes in effect immediately prior thereto;
Y	=	the total number of shares of Class A common stock issuable upon conversion of the notes then outstanding based on the per share conversion price of the notes in effect immediately prior thereto; and
X	=	the total number of shares of Class A common stock issuable upon conversion of the Permitted Exchange Notes then outstanding based on the per share conversion price of the Permitted Exchange Notes in effect at such time.

To the extent the conversion price of the Permitted Exchange Notes at any time and from time to time shall adjust pursuant to the terms of the Permitted Exchange Notes such that the conversion price thereof shall increase to an amount equal to or greater than the per share conversion price of the Series A notes in effect immediately prior to the corresponding adjustment of the notes, then the adjustment described above will cease to be effective and the per share conversion price of Series A notes will be re-adjusted as though the above adjustment did not occur.

In addition, we will adjust the conversion rate for Series A notes and Series B notes for:

(1) dividends or distributions on our Class A common stock payable in our Class A common stock or other Capital Stock of Sonic;

(2) subdivisions, combinations or certain reclassifications of our Class A common stock;

(3) distributions to all holders of our Class A common stock of certain rights to purchase our Class A common stock for a period expiring within 60 days of issuance at less than the then current sale price; and

(4) distributions to the holders of our Class A common stock of a portion of our assets (including shares of capital stock of a subsidiary) or debt securities issued by us or certain rights to purchase our securities (excluding cash dividends or other cash distributions from current or retained earnings unless the annualized amount thereof per share exceeds 5% of the sale price of our Class A common stock on the day preceding the date of declaration of such dividend or other distribution).

However, no adjustment to the conversion rate need be made if holders of the notes may participate in the transaction without conversion or in certain other cases.

If we pay a dividend or make a distribution on shares of our Class A common stock consisting of capital stock of, or similar equity interests in, a subsidiary or other business unit of ours, the conversion rate for Series A notes and Series B notes will be adjusted based on the market value of the securities so distributed relative to the market value of our Class A common stock, in each case based on the average sale prices of those securities for the 10 trading days commencing on and including the fifth trading day after the date on which ex-dividend trading commences for such dividend or distribution on the New York Stock Exchange or such other national or regional exchange or market on which the securities are then listed or quoted.

In addition, the Indenture provides that upon conversion of the notes, the holders of such notes will receive, in addition to the shares of Class A common stock issuable upon such conversion, the rights related to such Class A common stock pursuant to any future stockholder rights plan, whether or not such rights have separated from the Class A common stock at the time of such conversion. However, there shall not be any adjustment to the conversion privilege or conversion rate as a result of:

the issuance of the rights;

the distribution of separate certificates representing the rights;

the exercise or redemption of such rights in accordance with any rights agreement; or

the termination or invalidation of the rights.

Subject to the required purchase described in Change in Control Requires Purchase of Notes by Us at the Option of the Holder, if we are a party to a consolidation, merger or binding share exchange or a transfer of all or substantially all of our assets, the right to convert a note into Class A common stock will be changed into a right to convert it into the kind and amount of securities, cash or other assets of Sonic or another Person which the holder would have received if the holder had converted the holder s note immediately prior to the transaction.

The Indenture permits us to increase the conversion rate from time to time. Holders of the notes may, in certain circumstances, be deemed to have received a distribution subject to United States federal income tax as a dividend upon:

a taxable distribution to holders of Class A common stock which results in an adjustment of the conversion rate;

an increase in the conversion rate at our discretion; or

failure to adjust the conversion rate in some instances.

Certain Covenants

The Indenture contains, among others, the following covenants:

Limitation on Indebtedness. The Company will not, and will not cause or permit any of its Restricted Subsidiaries to, create, issue, incur, assume, guarantee or otherwise in any manner become directly or indirectly liable for the payment of or otherwise incur, contingently or otherwise (collectively, incur), any Indebtedness (including any Acquired Indebtedness), unless such Indebtedness is incurred by the Company or any Securing Guarantor or constitutes Acquired Indebtedness of a Restricted Subsidiary and, in each case, the Company s Consolidated Fixed Charge Coverage Ratio for the most recent four full fiscal quarters for which financial statements are available immediately preceding the incurrence of such Indebtedness taken as one period is at least equal to or greater than 2.00:1.

Notwithstanding the foregoing, the Company and, to the extent specifically set forth below, the Restricted Subsidiaries may incur each and all of the following (collectively, the Permitted Indebtedness):

(i) Indebtedness of the Company and the Guarantors under the Revolving Credit Facility and one or more term loans in an aggregate principal amount at any one time outstanding, not to exceed $550.0 million under the Revolving Credit Facility or in respect of letters of credit thereunder and any such term loans less the aggregate amount of all Net Cash Proceeds of Asset Sales applied to permanently reduce the commitments with respect to such Indebtedness pursuant to the covenant described above under the caption Limitation on Sale of Assets ;

(ii) Indebtedness of the Company and the Securing Guarantors under Mortgage Loans in an amount not to exceed $200.0 million at any time outstanding;

(iii) Indebtedness of the Company and the Guarantors under any Inventory Facility, whether or not an Inventory Facility under the Credit Facility;

(iv) Indebtedness of the Company or any Restricted Subsidiary outstanding on the Issue Date, and listed on Schedule I to the Indenture to the extent constituting Indebtedness in an amount greater than $5.0 million, and not otherwise referred to in this definition of Permitted Indebtedness ;

(v) Indebtedness of the Company owing to a Restricted Subsidiary; *provided* that any Indebtedness of the Company owing to a Restricted Subsidiary that is not a Securing Guarantor is made pursuant to an intercompany note and is unsecured and is subordinated in right of payment from and after such time as the notes shall become due and payable (whether at Stated Maturity, acceleration or otherwise) to the payment and performance of the Company s obligations under the notes; *provided, further*, that any disposition, pledge or transfer of any such Indebtedness to a Person (other than a disposition, pledge or transfer to a Restricted Subsidiary) shall be deemed to be an incurrence of such Indebtedness by the Company or other obligor not permitted by this clause (v);

(vi) Indebtedness of a Restricted Subsidiary owing to the Company or another Restricted Subsidiary; *provided* that any such Indebtedness is made pursuant to an intercompany note; *provided, further*, that (a) any disposition, pledge or transfer of any such Indebtedness to a Person (other than a disposition, pledge or transfer to the Company or a Restricted Subsidiary) shall be deemed to be an incurrence of such Indebtedness by the obligor not permitted by this clause (vi), and (b) any transaction pursuant to which any Restricted Subsidiary, which has Indebtedness owing to the Company or any other Restricted Subsidiary, ceases to be a Restricted Subsidiary shall be deemed to be the incurrence of Indebtedness by such Restricted Subsidiary that is not permitted by this clause (vi);

(vii) guarantees of any Restricted Subsidiary made in accordance with the provisions of *Limitation on Issuances of Guarantees of and Pledges for Indebtedness*; *provided* that the Indebtedness of the Company or any Restricted Subsidiary subject to such guarantee was permitted to be incurred;

(viii) obligations of the Company or any Securing Guarantor entered into in the ordinary course of business (a) pursuant to Interest Rate Agreements designed to protect the Company or any Restricted Subsidiary against fluctuations in interest rates in respect of Indebtedness of the Company or any Restricted Subsidiary as long as such obligations do not exceed the aggregate principal amount of such Indebtedness then outstanding, (b) under any Currency Hedging Agreements, relating to (i) Indebtedness of the Company or any Restricted Subsidiary and/or (ii) obligations to purchase or sell assets or properties, in each case, incurred in the ordinary course of business of the Company or any Restricted Subsidiary; provided, however, that such Currency Hedging Agreements do not increase the Indebtedness or other obligations of the Company or any Restricted Subsidiary outstanding other than as a result of fluctuations in foreign currency exchange rates or by reason of fees, indemnities and compensation payable thereunder or (c) under any Commodity Price Protection Agreements which do not increase the amount of Indebtedness or other obligations of the Company or any Restricted Subsidiary outstanding other than as a result of fluctuations in commodity prices or by reason of fees, indemnities and compensation payable thereunder;

(ix) Indebtedness of the Company or any Restricted Subsidiary represented by Capital Lease Obligations or Purchase Money Obligations or other Indebtedness incurred or assumed in connection with the acquisition or development of real or personal, movable or immovable, property in each case incurred for the purpose of financing or refinancing all or any part of the purchase price or cost of construction or improvement of property used in the business of the Company, in an aggregate principal amount pursuant to this clause (ix) not to exceed $35.0 million outstanding at any time; *provided* that the principal amount of any Indebtedness permitted under this clause (ix) did not in each case at the time of incurrence exceed the Fair Market Value, as determined by the Company in good faith, of the acquired or constructed asset or improvement so financed;

(x) obligations arising from agreements by the Company or a Restricted Subsidiary to provide for indemnification, customary purchase price closing adjustments, earn-outs or other similar obligations, in each case, incurred in connection with the

acquisition or disposition of any business or assets of a Restricted Subsidiary;

(xi) Indebtedness in the ordinary course of business to support the Company s or a Restricted Subsidiary s insurance or self-insurance obligations for workers compensation and other similar insurance coverages;

(xii) guarantees by the Company or a Guarantor of Indebtedness of a Restricted Subsidiary that was permitted to be incurred under the covenant described under the caption *Limitation on Indebtedness*;

(xiii) any renewals, extensions, substitutions, refundings, refinancings or replacements (collectively, a refinancing) of any Indebtedness incurred pursuant to the first paragraph of this covenant or described in clause (iv) or clauses (xviii) or (xix) of this definition of Permitted Indebtedness, including any successive refinancings so long as the borrower under such refinancing is the Company or, if not the Company, the same as the borrower of the Indebtedness being refinanced and the aggregate principal amount of Indebtedness represented thereby (or if such Indebtedness provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the maturity thereof, the original issue price of such Indebtedness plus any accreted value attributable thereto since the original issuance of such Indebtedness) does not exceed the initial principal amount of such Indebtedness plus the lesser of (I) the stated amount of any premium or other payment required to be paid in connection with such a refinancing pursuant to the terms of the Indebtedness being refinanced or (II) the amount of premium or other payment actually paid at such time to refinance the Indebtedness, plus, in either case, the amount of expenses of the Company incurred in connection with such refinancing and in the case of any refinancing of Indebtedness that is Subordinated Indebtedness other than in the case of Permitted Exchange Notes, (A) such new Indebtedness is made subordinated to the notes at least to the same extent as the Indebtedness being refinanced and (B) such refinancing does not reduce the Average Life to Stated Maturity or the Stated Maturity of such Indebtedness; and in the case of any refinancing of Permitted Exchange Notes (A) such new Indebtedness is either unsecured or secured by Liens that are junior to the notes on the same basis (or less favorable basis), including in respect of the Collateral securing such Indebtedness, as the Indebtedness being refinanced and (B) such new Indebtedness otherwise complies with the definition of Permitted Exchange Notes; *provided*, *however*, that in the case of any refinancing of Indebtedness described in clause (xix), (A) such new Indebtedness is either unsecured or secured by Liens junior to the notes and does not have benefit of collateral not otherwise securing the notes, (B) does not mature and is not subject to mandatory redemption at the option of a holder thereof (other than pursuant to change in control provisions or asset sale offers) prior to the 91st day after the Maturity Date, and (C) such refinancing is in compliance with Redemption of Notes at Our Option below;

(xiv) Indebtedness of the Company or any of its Restricted Subsidiaries arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; *provided, however,* that such Indebtedness is extinguished within five business days of occurrence;

(xv) Indebtedness of the Company to the extent the net proceeds thereof are promptly deposited to (a) discharge the notes as described under the caption Discharge of the Indenture or (b) redeem the notes, as described under the caption Optional Redemption;

(xvi) shares of Preferred Stock of a Restricted Subsidiary issued to the Company or a Wholly-Owned Restricted Subsidiary of the Company; *provided* that any subsequent transfer of any such shares of Preferred Stock (except to the Company or a Wholly-Owned Restricted Subsidiary of the Company) shall be deemed to be an issuance of Preferred Stock that was not permitted by this clause (xvi);

(xvii) Indebtedness of the Company and its Restricted Subsidiaries or any Securing Guarantor in addition to that described in clauses (i) through (xvi) above and clauses (xviii) and (xix) below, and any renewals, extensions, substitutions, refinancings or replacements of such Indebtedness, so long as the aggregate principal amount of all such Indebtedness shall not exceed $40.0 million outstanding at any one time in the aggregate, *provided* that such Indebtedness is unsecured or is secured by Liens that are junior to the notes;

(xviii) Permitted Exchange Notes and guarantees thereof; and

(xix) Indebtedness of the Company pursuant to the notes and Indebtedness of any Securing Guarantor pursuant to a Guarantee of the notes.

For purposes of determining compliance with this Limitation on Indebtedness covenant, in the event that an item of Indebtedness meets the criteria of more than one of the types of Indebtedness permitted by this covenant, the Company in its sole discretion shall classify or reclassify such item of Indebtedness and only be required to include the amount of such Indebtedness as one of such types; provided that Indebtedness under the Revolving Credit Facility (which for clarity purposes shall not include any Inventory Facility under the Credit Facility) which is outstanding or available on the Issue

Date, and any renewals, extensions, substitutions, refundings, refinancings or replacements thereof, in an amount not in excess of the amount permitted to be incurred pursuant to clause (i) above, shall be deemed to have been incurred pursuant to clause (i) above rather than pursuant to the first paragraph under this *Limitation on Indebtedness*. Accrual of interest, accretion or amortization of original issue discount and the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, and the payment of dividends on any Redeemable Capital Stock or Preferred Stock in the form of additional shares of the same class of Redeemable Capital Stock or Preferred Stock will not be deemed to be an incurrence of Indebtedness for purposes of this covenant provided, in each such case, that the amount thereof as accrued over time is included in the Consolidated Fixed Charge Coverage Ratio of the Company.

Limitation on Restricted Payments. (a) Subject to the Burdensome Agreements covenant contained in the Credit Facility in effect at the Issue Date, the Company will not, and will not cause or permit any Restricted Subsidiary to, directly or indirectly:

(i) declare or pay any dividend on, or make any distribution to holders of, any shares of the Company s Capital Stock (other than dividends or distributions payable solely in shares of its Qualified Capital Stock or in options, warrants or other rights to acquire shares of such Qualified Capital Stock);

(ii) purchase, redeem, defease or otherwise acquire or retire for value, directly or indirectly, the Company s Capital Stock or any Capital Stock of any Affiliate of the Company, including any Subsidiary of the Company (other than Capital Stock of any Restricted Subsidiary of the Company), or options, warrants or other rights to acquire such Capital Stock;

(iii) make any principal payment on, or repurchase, redeem, defease, retire or otherwise acquire for value, prior to any scheduled principal payment, sinking fund payment or maturity, any Subordinated Indebtedness or any Permitted Exchange Notes or any refinancing of Permitted Exchange Notes;

(iv) declare or pay any dividend or distribution on any Capital Stock of any Restricted Subsidiary to any Person (other than:

a. to the Company or any of its Wholly-Owned Restricted Subsidiaries that are Securing Guarantors in the case of a Restricted Subsidiary that is a Securing Guarantor; or

b. dividends or distributions made by a Restricted Subsidiary:

i. organized as a partnership, limited liability company or similar pass-through entity to the holders of its Capital Stock in amounts sufficient to satisfy the tax liabilities arising from their ownership of such Capital Stock; or

ii. on a pro rata basis to all stockholders of such Restricted Subsidiary); or

(v) make any Investment in any Person (other than any Permitted Investments)

(any of the foregoing actions described in clauses (i) through (v), other than any such action that is a Permitted Payment (as defined below), collectively, Restricted Payments) (the amount of any such Restricted Payment, if other than cash, shall be the Fair Market Value of the assets proposed to be transferred, as determined by the board of directors of the Company, whose determination shall be conclusive and evidenced by a board resolution), unless

(1) immediately before and immediately after giving effect to such proposed Restricted Payment on a *pro forma* basis, no Default or Event of Default shall have occurred and be continuing and such Restricted Payment shall not be an event which is, or after notice or

lapse of time or both, would be, an event of default under the terms of any Indebtedness of the Company or its Restricted Subsidiaries;

(2) immediately before and immediately after giving effect to such Restricted Payment on a *pro forma* basis, the Company could incur $1.00 of additional Indebtedness (other than Permitted Indebtedness) under the provisions described under Limitation on Indebtedness; and

(3) after giving effect to the proposed Restricted Payment, the aggregate amount of all such Restricted Payments declared or made after the Issue Date and all Designation Amounts does not exceed the sum of:

a. 50% of the aggregate Consolidated Net Income of the Company accrued on a cumulative basis during the period beginning on the first day of the Company s fiscal quarter following the Issue Date and ending on the last day of the Company s last fiscal quarter ending prior to the date of the Restricted Payment, or, if such aggregate cumulative Consolidated Net Income shall be a loss, minus 100% of such loss;

b. the aggregate Net Cash Proceeds received after the Issue Date by the Company either (x) as capital contributions in the form of common equity to the Company or (y) from the issuance or sale (other than to any of its Subsidiaries) of Qualified Capital Stock of the Company or any options, warrants or rights to purchase such Qualified Capital Stock of the Company (except, in each case, to the extent such proceeds are used to purchase, redeem or otherwise retire Capital Stock or Subordinated Indebtedness as set forth below in clause (ii) of paragraph (b) below) (and excluding the Net Cash Proceeds from the issuance of Qualified Capital Stock financed, directly or indirectly, using funds borrowed from the Company or any Subsidiary until and to the extent such borrowing is repaid);

c. the aggregate Net Cash Proceeds received after the Issue Date, by the Company (other than from any of its Subsidiaries) upon the exercise of any options, warrants or rights to purchase Qualified Capital Stock of the Company (and excluding the Net Cash Proceeds from the exercise of any options, warrants or rights to purchase Qualified Capital Stock financed, directly or indirectly, using funds borrowed from the Company or any Subsidiary until and to the extent such borrowing is repaid);

d. the aggregate Net Cash Proceeds received after the Issue Date, by the Company from the conversion or exchange, if any, of debt securities or Redeemable Capital Stock of the Company or its Restricted Subsidiaries into or for Qualified Capital Stock of the Company plus, to the extent such debt securities or Redeemable Capital Stock were issued after the Issue Date, upon the conversion or exchange of such debt securities or Redeemable Capital Stock, the aggregate of Net Cash Proceeds from their original issuance (and excluding the Net Cash Proceeds from the conversion or exchange of debt securities or Redeemable Capital Stock financed, directly or indirectly, using funds borrowed from the Company or any Subsidiary until and to the extent such borrowing is repaid);

e. (a) in the case of the disposition or repayment of any Investment constituting a Restricted Payment made after the Issue Date, an amount (to the extent not included in Consolidated Net Income) equal to (a) the lesser of (i) the return of capital with respect to such Investment and (ii) the initial amount of such Investment, in either case, less the cost of the disposition of such Investment and net of taxes, and (b) in the case of the designation of an Unrestricted Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary ceasing to be an Unrestricted Subsidiary for purposes of the Indenture (in each case, as long as the designation of such Subsidiary as an Unrestricted Subsidiary was deemed a Restricted Payment), the Fair Market Value of the Company s interest in such Subsidiary provided that such amount shall not in any case exceed the amount of the Restricted Payment deemed made at the time the Subsidiary was designated as an Unrestricted Subsidiary;

f. any amount which previously qualified as a Restricted Payment on account of any Guarantee entered into by the Company or any Restricted Subsidiary; provided that such Guarantee has not been called upon and the obligation arising under such Guarantee no longer exists; and

g. the aggregate principal amount of 4.25% Convertible Senior Subordinated Notes that convert into or for Qualified Capital Stock of the Company on or before November 30, 2010.

(b) Notwithstanding the foregoing, and in the case of clauses (ii) through (iii) and clause (xii) below, so long as no Default or Event of Default is continuing or would arise therefrom, the foregoing provisions shall not prohibit the following actions (each of clauses (i) through (iv) and (vii) through (xiii) being referred to as a Permitted Payment):

(i) the payment of any dividend within 60 days after the date of declaration thereof, if at such date of declaration such payment was permitted by the provisions of paragraph (a) of this Section and such payment shall have been deemed to have been paid on the date of declaration and shall not have been deemed a Permitted Payment for purposes of the calculation required by paragraph (a) of this Section;

(ii) the repurchase, redemption, or other acquisition or retirement for value of any shares of any class of Capital Stock of the Company in exchange for, including any such exchange pursuant to the exercise of a conversion right or privilege in connection with which cash is paid in lieu of the issuance of fractional shares or scrip, or out of the Net Cash Proceeds of a substantially concurrent issuance and sale for cash (other than to a Subsidiary) of, other shares of Qualified Capital Stock of the Company; *provided* that the Net Cash Proceeds from the issuance of such shares of Qualified Capital Stock are excluded from clause

(3)(c) of paragraph (a) of this Section;

(iii) the repurchase, redemption, defeasance, retirement, refinancing, acquisition for value or payment of principal of any Subordinated Indebtedness (other than Redeemable Capital Stock) (a refinancing) through the

substantially concurrent issuance of new Subordinated Indebtedness of the Company, *provided* that any such new Subordinated Indebtedness (1) shall be in a principal amount that does not exceed the principal amount so refinanced (or, if such Subordinated Indebtedness provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration thereof, then such lesser amount as of the date of determination), plus the lesser of (I) the stated amount of any premium or other payment required to be paid in connection with such a refinancing pursuant to the terms of the Indebtedness being refinanced or (II) the amount of premium or other payment actually paid at such time to refinance the Indebtedness, plus, in either case, the amount of expenses of the Company incurred in connection with such refinancing; (2) has its first scheduled principal payment, either at the option of the holders thereof or by the terms of such new Subordinated Indebtedness, later than the Stated Maturity for the final scheduled principal payment of the notes; and (3) is expressly subordinated in right of payment to the notes at least to the same extent as the Subordinated Indebtedness to be refinanced;

(iv) the repurchase, redemption, defeasance, retirement, refinancing, acquisition for value or payment of principal of all or any portion of the 4.25% Convertible Senior Subordinated Notes through the substantially concurrent issuance of Permitted Exchange Notes;

(v) the purchase, redemption, or other acquisition or retirement for value of any class of Capital Stock of the Company from employees, former employees, directors or former directors of the Company or any Subsidiary in an amount not to exceed $2.0 million in the aggregate in any twelve-month period plus the aggregate cash proceeds received by the Company during such twelve-month period from any reissuance of Capital Stock by the Company to members of management of the Company or any Restricted Subsidiary; *provided* that the Company may carry over and make in a subsequent twelve-month period, in addition to the amount otherwise permitted for such twelve-month period, the amount of such purchase, redemptions or other acquisitions for value permitted to have been made but not made in any preceding twelve-month period; *provided* that the aggregate repurchases, redemptions or other acquisitions or retirements for value does not exceed $4.0 million in any twelve-month period;

(vi) the repurchase, redemption or other acquisition or retirement for value of Capital Stock of the Company issued pursuant to acquisitions by the Company to the extent required by or needed to comply with the requirements of any of the Manufacturers with which the Company or a Restricted Subsidiary is a party to a franchise agreement;

(vii) the payment of the contingent purchase price or the payment of the deferred purchase price, including holdbacks (and the receipt of any corresponding consideration therefor), of an acquisition to the extent any such payment would be deemed a Restricted Payment and would otherwise have been permitted by the Indenture at the time of such acquisition;

(viii) the repurchase of Capital Stock of the Company issued to sellers of businesses acquired by the Company or its Restricted Subsidiaries, in an amount not to exceed $5.0 million during the term of the Indenture;

(ix) the repurchase of Capital Stock deemed to occur upon exercise of stock options to the extent that shares of such Capital Stock represent a portion of the exercise price of such options;

(x) the payment of cash in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible or exercisable for Capital Stock of the Company;

(xi) payments or distributions to stockholders pursuant to appraisal rights required under applicable law in connection with any consolidation, merger or transfer of assets that complies with the covenant described under the caption Consolidation, Merger, Sale or Conveyance;

(xii) the making of any Restricted Payments after the date of the Indenture not exceeding in the aggregate $50.0 million; *provided* that no Default or Event of Default shall have occurred and be continuing immediately after such transaction;

(xiii) the purchase of 8 5/8% Senior Subordinated Notes and Permitted Exchange Notes from Net Cash Proceeds of any Asset Sale pursuant to the limitation on sale of assets covenant or change of control provision contained in the indentures governing the 8 5/8% Senior Subordinated Notes and Permitted Exchange Notes, respectively, subject first to the application of such Net Cash Proceeds pursuant to paragraph (b) under *Limitation on Sale of Assets* below in the case of an Asset Sale and compliance with Change in Control Requires Purchase of Notes by Us at the Option of the Holder in the case of a Change in Control; and

(xiv) the purchase of notes pursuant to Change in Control Requires Purchase of Notes by Us at the Option of the Holder below.

Limitation on Transactions with Affiliates. The Company will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, enter into any transaction or series of related transactions (including, without limitation, the sale, purchase, exchange or lease of assets, property or services) with or for the benefit of any Affiliate of the Company (other than the Company or a Restricted Subsidiary) unless such transaction or series of related transactions is entered into in good faith and in writing and:

(i) such transaction or series of related transactions is on terms that are no less favorable to the Company or such Restricted Subsidiary, as the case may be, than those that would be available in a comparable transaction in arm s-length dealings with an unrelated third party;

(ii) with respect to any transaction or series of related transactions involving aggregate value in excess of $2.0 million the Company delivers an officers certificate to the Trustee certifying that such transaction or series of related transactions complies with clause (a) above or such transaction or series of related transactions is approved by a majority of the Disinterested Directors of the board of directors of the Company, or in the event there is only one Disinterested Director, by such Disinterested Director; and

(iii) with respect to any transaction or series of related transactions involving aggregate value in excess of $5.0 million, either (i) such transaction or series of related transactions has been approved by a majority of the Disinterested Directors of the board of directors of the Company, or in the event there is only one Disinterested Director, by such Disinterested Director, or (ii) the Company delivers to the Trustee a written opinion of an investment banking firm of national standing or other recognized independent expert with experience appraising the terms and conditions of the type of transaction or series of related transactions for which an opinion is required stating that the transaction or series of related transactions or the consideration being paid is fair to the Company or such Restricted Subsidiary from a financial point of view;

provided, however, that this provision shall not apply to:

a. compensation and employee benefit arrangements with any officer or director of the Company, including under any stock option or stock incentive plans, entered into in the ordinary course of business;

b. any transaction permitted as a Restricted Payment pursuant to the covenant described in *Limitation on Restricted Payments*;

c. the payment of customary fees to directors of the Company and its Restricted Subsidiaries;

d. any transaction with any officer or member of the Board of Directors of the Company involving indemnification arrangements;

e. loans or advances to officers of the Company in the ordinary course of business not to exceed $1.0 million in any calendar year; and

f. any transactions undertaken pursuant to any contractual obligations in existence on the Issue Date and any renewals, replacements or modifications of such obligations (pursuant to new transactions or otherwise) on terms no less favorable than could be received from an unaffiliated third party.

Limitation on Liens. The Company will not, and will not cause or permit any Restricted Subsidiary to, directly or indirectly, create, incur or affirm any Lien of any kind securing any Indebtedness, including any assumption, guarantee or other liability with respect thereto by any Restricted Subsidiary, upon any Collateral, unless the notes or a Guarantee in the case of Liens of a Guarantor are directly secured equally and ratably with (or, in the case of Subordinated Indebtedness, Permitted Exchange Notes or any refinancing of Permitted Exchange Notes, prior or

senior thereto, with the same relative priority as the notes shall have with respect to such Subordinated Indebtedness) the obligation or liability secured by such Lien except for Liens:

(A) securing any Indebtedness of the Company or any Securing Guarantor pursuant to the Revolving Credit Facility or one or more term loans permitted pursuant to clause (i) of the definition of Permitted Indebtedness (as well as, without duplication to clause (D), any swap contracts or cash management arrangements of any lender or affiliate thereof that are secured pursuant to the Credit Facility); *provided* that if the Company or any Restricted Subsidiary

creates, incurs or affirms a First Priority Lien for the benefit of the First Priority Lien Obligations, the Company or such Restricted Subsidiary shall create, incur or affirm a Second Priority Lien for the benefit of the Second Priority Lien Obligations;

(B) securing any Inventory Facility;

(C) securing any Indebtedness which became Indebtedness pursuant to a transaction permitted under Consolidation, Merger, Sale or Conveyance or securing Acquired Indebtedness which was created prior to (and not created in connection with, or in contemplation of) the incurrence of such Indebtedness (including any assumption, guarantee or other liability with respect thereto by any Restricted Subsidiary) and which Indebtedness is permitted under the provisions of *Limitation on Indebtedness*; *provided, however*, that in the case of this clause (C), any such Lien only extends to the assets that were subject to such Lien securing such Indebtedness prior to the related acquisition by the Company or its Restricted Subsidiaries;

(D) Liens securing Indebtedness incurred pursuant to clauses (ii), (viii), (ix), (xvii), (xviii) and (xix) under the covenant described under the caption *Limitation on Indebtedness*; *provided* that in the case of clauses (xvii) and (xviii), only to the extent permitted under clauses (xvii) and (xviii), respectively, and in the case of (viii), only to the extent the obligation or Indebtedness related to such Interest Rate Agreement, Currency Hedging Agreement or Commodity Price Protection Agreement, as the case may be, will be permitted to be secured;

(E) securing any Indebtedness incurred in connection with any refinancing, renewal, substitutions or replacements of any such Indebtedness described in clauses (A), (B), (C) and (D), so long as the aggregate principal amount of Indebtedness represented thereby (or if such Indebtedness provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the maturity thereof, the original issue price of such Indebtedness plus any accreted value attributable thereto since the original issuance of such Indebtedness) is not increased by such refinancing by an amount greater than the lesser of:

i. the stated amount of any premium or other payment required to be paid in connection with such a refinancing pursuant to the terms of the Indebtedness being refinanced; or

ii. the amount of premium or other payment actually paid at such time to refinance the Indebtedness, plus, in either case, the amount of expenses of the Company incurred in connection with such refinancing;

provided, *however*, that in the case of clause (C), any such Lien only extends to the assets that were subject to such Lien securing such Indebtedness prior to the related acquisition by the Company or its Restricted Subsidiaries;

(F) securing any Permitted Exchange Notes; provided that the Company will not, and will not cause or permit any Restricted Subsidiary to, directly or indirectly, create, incur or affirm any Lien of any kind securing any such Indebtedness unless the notes or a Guarantee in the case of Liens of a Guarantor are directly secured prior or senior thereto;

(G) Liens for taxes not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the Company or any Restricted Subsidiary in accordance with GAAP;

(H) carriers , warehousemen s, mechanics , materialmen s, repairmen s or other like Liens arising in the ordinary course of business which are not overdue for a period of more than thirty (30) days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the Company or any Restricted Subsidiary;

(I)

pledges or deposits in the ordinary course of business in connection with workers compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(J) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, letters of credit, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(K) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the Company or any Restricted Subsidiary;

(L) Liens securing judgments for the payment of money not constituting an Event of Default under clause (6) of Events of Default; Waiver and Notice; and

(M) Liens not otherwise permitted under this section; *provided* that (i) at the time of the creation or incurrence of such Lien, no Event of Default shall exist or would result from such Lien, (ii) any such Lien is junior to the Second Priority Lien Obligations, and (iii) the aggregate Indebtedness secured by all Liens created or incurred in reliance on this clause (M) shall not exceed $25.0 million at any time.

Notwithstanding the foregoing, any Lien securing the notes granted pursuant to this covenant and not otherwise required to be granted pursuant to the Security Documents shall be automatically released and discharged upon the release by the holder or holders of the Indebtedness described in the first paragraph under *Limitation on Liens* above of their Lien on the property or assets of the Company or any Restricted Subsidiary (including any deemed release upon payment in full of all obligations under such Indebtedness), at such time as the holder or holders of all such Indebtedness also release their Lien on the property or assets of the Company or such Restricted Subsidiary, or upon any sale, exchange or transfer to any Person not an Affiliate of the Company of the property or assets secured by such Lien in accordance with the terms of the Indenture, or of all of the Capital Stock held by the Company or any Restricted Subsidiary in, or all or substantially all the assets of, any Restricted Subsidiary creating such Lien.

The Company and the Guarantors shall not have more than $25,000,000.00 in the aggregate (the Deposit Amount Cap) credited to deposit accounts for at least ten (10) consecutive Business Days; provided, however, that funds credited to deposit accounts where the depository bank has entered into an account control agreement such that the Trustee or the Collateral Agent has a security interest in such deposit account and the funds credited thereto perfected by control (within the meaning of the UCC) on a second-priority basis consistent with the Intercreditor Agreement shall not count toward such Deposit Amount Cap.

Limitation on Sale of Assets. (a) The Company will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, consummate an Asset Sale unless:

(i) at least 75% of the consideration from such Asset Sale consists of:

(a) cash or Cash Equivalents;

(b) Replacement Assets; or

(c) a combination of any of the foregoing; and

(ii) the Company or such Restricted Subsidiary receives consideration at the time of such Asset Sale at least equal to the Fair Market Value of the shares or assets subject to such Asset Sale (as determined by the board of directors of the Company and evidenced in a board resolution); *provided* that any notes or other obligations received by the Company or any such Restricted Subsidiary from any transferee of assets from the Company or such Restricted Subsidiary that are converted by the Company or such Restricted Subsidiary into cash at Fair Market Value within 30 days after receipt shall be deemed to be cash for purposes of this provision.

(b) The Company and its Restricted Subsidiaries shall apply Net Cash Proceeds of any Asset Sales as follows:

(A) If (i) the EBITDA component of the Revolving Borrowing Base under the Revolving Credit Facility has not been eliminated or (ii) after giving pro forma effect to such Asset Sale (I) the outstanding amount of all Revolving Loans under the Revolving Credit Facility exceeds $25 million or (II) the Revolving Credit Advance Limit under the Revolving Credit Facility is less than $75 million, then 100% of such Net Cash Proceeds may be applied to repay Obligations under the Revolving Credit Facility;

(B) If (i) the EBITDA component of the Revolving Borrowing Base under the Revolving Credit Facility has been eliminated and (ii) after giving pro forma effect to such Asset Sale (I) the outstanding amount of all Revolving Loans under the Revolving Credit Facility does not exceed $25 million and (II) the Revolving Credit Advance Limit under the Revolving Credit Facility is not less than $75 million, then 50% of such Net Cash Proceeds may be applied to repay Obligations under the Revolving Credit Facility and 50% of such Net Cash Proceeds shall be applied as set forth in paragraph (c) or paragraph (d) below, as the case may be; *provided* that to the extent that Net Cash Proceeds have been used to repay Obligations under the Revolving Credit Facility and there remain Net Cash Proceeds not required to be so applied, then such Net Cash Proceeds may be invested in Replacement Assets (or, if such Net Cash Proceeds are not invested in Replacement Assets within 365 days of the Asset Sale, then such Net Cash Proceeds shall be applied as set forth in paragraph (c) or paragraph (d)); and

(C) If Indebtedness permitted pursuant to clause (i) of the definition of Permitted Indebtedness does not require prepayment (or such prepayment is waived), then 50% of such Net Cash Proceeds shall be applied as set forth in paragraph (c) or paragraph (d), as the case may be, and 50% of such Net Cash Proceeds may be invested in Replacement Assets (or, if such Net Cash Proceeds are not invested in Replacement Assets within 365 days of the Asset Sale, then such Net Cash Proceeds shall be applied as set forth in paragraph (c) or paragraph (d)).

The terms Revolving Borrowing Base, Revolving Loans and Revolving Credit Advance Limit shall have the meaning assigned thereto in the Credit Facility, or any comparable successor provisions thereto that are substantially similar in economic terms. The amount of Net Cash Proceeds of any Asset Sales to be applied as set forth in paragraph (c) or paragraph (d) below pursuant to clause (B) or (C) above constitutes Offer Proceeds.

(c) This paragraph (c) shall apply to all Offer Proceeds received within 365 days of the Issue Date and then for periods thereafter this paragraph (c) shall apply to all Offer Proceeds up to an aggregate amount of Offer Proceeds equal to 60% of the aggregate principal amount of notes as of the Issue Date. The Company shall redeem the notes for cash at any time it is in receipt of Offer Proceeds, in whole or in part, at a redemption price equal to 100% of the principal amount of the notes equal to such Offer Proceeds, plus any accrued and unpaid interest on the notes redeemed up to, but not including, the redemption date. If fewer than all of the notes are to be redeemed pursuant to this paragraph (c) at any given time, the trustee shall select the notes to be redeemed on a pro rata basis. If any note is to be redeemed in part only, a new note in principal amount equal to the unredeemed principal portion will be issued.

(d) This paragraph (d) shall apply when Offer Proceeds shall no longer be applied pursuant to paragraph (c). When the aggregate amount of Offer Proceeds exceeds $5.0 million or more, the Company will make an offer to purchase (an Offer) to all holders of the notes in accordance with the procedures set forth in the Indenture in the maximum principal amount (expressed as a multiple of $1,000) of notes that may be purchased out of an amount (the Note Amount) equal to such Offer Proceeds. The offer price for the notes will be payable in cash in an amount equal to 100% of the principal amount of the notes plus accrued and unpaid interest, if any, to the date (the Offer Date) such Offer is consummated (the Offered Price), in accordance with the procedures set forth in the Indenture. To the extent that the aggregate Offered Price of the notes tendered pursuant to the Offer is less than the Note Amount relating thereto, the Company may use any remaining Offer Proceeds for any purpose not prohibited by the Indenture. If the aggregate principal amount of notes surrendered by holders thereof exceeds the amount of Offer Proceeds, the Trustee shall select the notes to be purchased on a pro rata basis based on the aggregate principal amount of notes surrendered by each holder. Upon the completion of the purchase of all the notes tendered pursuant to an Offer, the amount of Offer Proceeds, if any, shall be reset at zero.

(e) If the Company becomes obligated to make an Offer pursuant to paragraph (d) above, the notes shall be purchased by the Company, at the option of the holders thereof, in whole or in part in integral multiples of $1,000, on a date that is not earlier than 30 days and not later than 60 days from the date the notice of the Offer is given to holders, or such later date as may be necessary for the Company to comply with the requirements under the Exchange Act.

(f) The Indenture will provide that the Company will comply to the extent applicable with the applicable tender offer rules, including Rule 14e-1 under the Exchange Act, and any other applicable securities laws or regulations in connection with an Offer.

Limitation on Issuances of Guarantees of and Pledges for Indebtedness. (a) The Company will not cause or permit any Restricted Subsidiary (which is not a Guarantor), directly or indirectly, to guarantee, assume or in any other manner become liable with respect to any Indebtedness of the Company or any Restricted Subsidiary unless such Restricted Subsidiary executes and delivers a supplemental indenture to the Indenture providing for a secured Guarantee of the notes to the same extent as the notes and execute a joinder agreement to the Security Documents within 30 days on the same terms as the guarantee of such Indebtedness except that if such Indebtedness is by its terms Subordinated Indebtedness, any such assumption, guarantee or other liability of such Restricted Subsidiary with respect to such Indebtedness shall be subordinated to such Restricted Subsidiary s Guarantee of the notes at least to the same extent as such Indebtedness is subordinated to the notes.

(b) The Company will provide to the trustee and the Collateral Agent, promptly following the date that any Person becomes a Restricted Subsidiary (other than any non-Securing Guarantor if the Fair Market Value of such non-Securing Guarantor, together with the Fair Market Value of all other non-Securing Guarantor, as of such date, does not exceed in the

aggregate $100,000), a supplemental indenture to the Indenture and a joinder agreement related to the Security Documents, executed by such new Restricted Subsidiary, providing for a full and unconditional secured Guarantee to the same extent as the notes by such new Restricted Subsidiary of the Indenture Obligations and a pledge of its assets as Collateral for the notes to the same extent as that set forth in the Indenture and the Security Documents.

(c) Notwithstanding the foregoing, any Guarantee by a Restricted Subsidiary of the notes shall provide by its terms that it (and all Liens securing the same) shall be automatically and unconditionally released and discharged upon (i) any sale, exchange or transfer, to any Person not an Affiliate of the Company, of all of the Company s Capital Stock in, or all or substantially all the assets of, such Restricted Subsidiary, which transaction is in compliance with the terms of the Indenture and pursuant to which transaction such Subsidiary is released from all guarantees, if any, by it of other Indebtedness of the Company or any Restricted Subsidiaries or (ii) the release by the holders of the Indebtedness of the Company of their security interest or their guarantee by such Restricted Subsidiary (including any deemed release upon payment in full of all obligations under such Indebtedness), at such time as (A) no other Indebtedness of the Company has been secured or guaranteed by such Restricted Subsidiary, as the case may be, or (B) the holders of all such other Indebtedness which is secured or guaranteed by such Restricted Subsidiary also release their security interest in or guarantee by such Restricted Subsidiary (including any deemed release upon payment in full of all obligations under such Indebtedness).

Limitation on Subsidiary Preferred Stock. The Company will not permit:

(a) any Restricted Subsidiary of the Company to issue, sell or transfer any Preferred Stock, except for (i) Preferred Stock issued or sold to, held by or transferred to the Company or a Wholly Owned Restricted Subsidiary and (ii) Preferred Stock issued by a Person prior to the time

(A) such Person becomes a Restricted Subsidiary,

(B) such Person merges with or into a Restricted Subsidiary or

(C) a Restricted Subsidiary merges with or into such Person;

provided that such Preferred Stock was not issued or incurred by such Person in anticipation of the type of transaction contemplated by subclause (A), (B) or (C) or

(b) any Person (other than the Company or a Wholly Owned Restricted Subsidiary) to acquire Preferred Stock of any Restricted Subsidiary from the Company or any Restricted Subsidiary, except, in the case of clause (a) or (b), or upon the acquisition of all the outstanding Capital Stock of such Restricted Subsidiary in accordance with the terms of the Indenture.

Limitation on Dividends and Other Payment Restrictions Affecting Subsidiaries. The Company will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to

(i) pay dividends or make any other distribution on its Capital Stock or any other interest or participation in or measured by its profits,

(ii) pay any Indebtedness owed to the Company or any other Restricted Subsidiary,

(iii) make any Investment in the Company or any other Restricted Subsidiary or

(iv) transfer any of its properties or assets to the Company or any other Restricted Subsidiary,

except for:

a. any encumbrance or restriction pursuant to an agreement in effect on the Issue Date;

b. any encumbrance or restriction, with respect to a Restricted Subsidiary that was not a Restricted Subsidiary of the Company on the Issue Date, in existence at the time such Person becomes a Restricted Subsidiary of the Company and not incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary, *provided* that such encumbrances and restrictions are not applicable to the Company or any Restricted Subsidiary or the properties or assets of the Company or any Restricted Subsidiary other than such Subsidiary which is becoming a Restricted Subsidiary;

c. customary provisions contained in an agreement that has been entered into for the sale or other disposition of all or substantially all of the Capital Stock or assets of a Restricted Subsidiary; *provided however* that the restrictions are applicable only to such Restricted Subsidiary or assets;

d. any encumbrance or restriction existing under or by reason of applicable law or any requirement of any regulatory body;

e. customary provisions restricting subletting or assignment of any lease governing any leasehold interest of any Restricted Subsidiary;

f. covenants in franchise agreements with Manufacturers customary for franchise agreements in the automobile retailing industry;

g. any encumbrance or restriction contained in any Purchase Money Obligations for property to the extent such restriction or encumbrance restricts the transfer of such property;

h. any encumbrances or restrictions in security agreements securing Indebtedness (other than Subordinated Indebtedness) of a Securing Guarantor (including any Credit Facility or any Inventory Facility) (to the extent that such Liens are otherwise incurred in accordance with *Limitation on Liens*) that restrict the transfer of property subject to such agreements, provided that any such encumbrance or restriction is released to the extent the underlying Lien is released or the related Indebtedness is repaid;

i. covenants in Inventory Facilities customary for inventory and floor plan financing in the automobile retailing industry;

j. any encumbrance related to assets acquired by or merged into or consolidated with the Company or any Restricted Subsidiary so long as such encumbrance was not entered into in contemplation of the acquisition, merger or consolidation transaction;

k. customary non-assignment provisions con