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KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 03/29/2023 03:08 PM PG: 1 OF 11

② 22NW7149669LZ

g/s

Prepared by and return to:

General Motors LLC
Legal Staff
Mail Code: 482-C19-GRE
Detroit, Michigan 48265
Attention: Victoria E. Urbach, Esq.

INTERCREDITOR AND SUBORDINATION AGREEMENT

THIS INTERCREDITOR AND SUBORDINATION AGREEMENT ("**Agreement**") is entered into as of the 16 day of March, 2023, by and among MERCEDES-BENZ FINANCIAL SERVICES USA LLC, a Delaware limited liability company ("**Lender**") whose address is 35555 W. Twelve Mile Road, Suite 100, Farmington Hills, Michigan 48331, GENERAL MOTORS LLC, a Delaware limited liability company ("**Beneficiary**"), and MURGADO MW PROPERTIES, LLC, a Delaware limited liability company ("**Owner**"). Lender, Beneficiary, and Owner are each also a "**Party**" and collectively the "**Parties**."

BACKGROUND STATEMENTS

A. Owner owns certain real property located at 18 East Dundee Road, in the city of Barrington, County of Cook, State of Illinois, a legal description of which is attached hereto as **Exhibit A** and incorporated herein by this reference (the "**Property**").

B. Lender has extended a loan to Owner in the principal amount of One Hundred Eight Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$108,750,000.00) (the "**Loan**") as evidenced by that certain Fixed Rate Promissory Note dated as of the date hereof (the "**Note**") made by Owner in favor of Lender.

C. The Loan is secured by, among other things, a Mortgage dated on or about even date herewith, to be recorded in the Cook County, Illinois Records (the "**Official Records**") (such instrument, as amended, increased, renewed, modified, consolidated, replaced, combined, substituted, severed, split, spread or extended from time to time, being herein referred to as the "**Mortgage**"). The Mortgage, the Note, together with any other documents or instruments evidencing the Loan, are collectively the "**Loan Documents**."

D. Owner is a party to that certain Use and Option Agreement dated as of October 12, 2021, as assigned by that certain Assignment of Use and Option Agreement dated March __, 2023 (the Use and Option Agreement, as assigned, the "**UOA**"), which encumbers the Property and benefits Beneficiary, a

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memorandum of which (the “**Memorandum**”) was recorded as Document No. 2129846015 of the Official Records on October 25, 2021. Capitalized terms used but not defined in this Agreement shall have the meanings given to them in the UOA.

E. The Parties have made certain agreements relating to the Loan Documents and the UOA, as set forth below.

F. In addition to the Property, the Loan is secured by additional parcels of real property as described in the Mortgage and the Loan Documents (the “**Other Properties**”). The UOA and the Memorandum pertain only to the Property and not to the Other Properties, and the terms and conditions set forth below in this Agreement are not intended by the Parties to restrict Owner’s or Lender’s respective rights and obligations concerning the Other Properties.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and of the covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Background Statements.** The Background Statements above are incorporated into the body of this Agreement.

2. **Subordination.** Lender consents to Owner entering into the UOA and the Memorandum and the recordation of the Memorandum against the Property. Beneficiary acknowledges that the UOA and the rights of Beneficiary thereunder shall be, subject to the terms and conditions of this Agreement, subordinate to the lien of the Mortgage, provided, that (A) the principal balance of the Loan (excluding interest, fees, and advances of taxes, insurance, and other amounts to protect the security of the Property) shall not exceed the sum of One Hundred Eight Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$108,750,000.00) (the “**Maximum Principal Amount**”), and (B) the principal balance of the Loan (excluding interest, fees, and advances of taxes, insurance, and other amounts to protect the security of the Property) allocated to the Property shall not exceed the Payoff Amount (defined below). Notwithstanding clause (A) of the immediately preceding sentence, the Parties acknowledge that Lender in its discretion may in the future advance additional loans or credit to Owner or its affiliates, which loans or credit may be secured by the Other Properties or additional collateral, and such future loans or credit will not violate the terms of this Agreement so long as (a) clause (B) of the immediately preceding sentence is complied with, and (ii) neither Beneficiary nor any Affiliate of Beneficiary has any right, title, or interest in or to such additional collateral.

3. **No Subordination of Loan; Subsequent Financing.** Lender shall not subordinate the lien or security interests of the Mortgage or other Loan Documents to any other lien, security interest, or other encumbrance against the Property (or any part thereof or interest therein) without the prior written consent of Beneficiary, which may be granted or withheld in Beneficiary’s sole discretion, and any such attempted subordination shall be void and of no effect. Lender further agrees that the Mortgage and other Loan Documents are not and shall not at any time be cross-defaulted with any documents or instruments evidencing or securing obligations other than those evidenced by the Note and other Loan Documents, except as may be expressly set forth therein or with that certain floorplan financing loan facility extended by Lender to Owner on or about the date hereof to finance operations on the Property and the Other Properties (the “**Floorplan Financing**”). Lender further agrees that the Mortgage and other Loan Documents do not and shall not at any time secure obligations other than those evidenced by the Note and other Loan Documents, except as may be expressly set forth therein or in the Floorplan Financing. Owner

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agrees that it will not pledge, hypothecate or otherwise deliver the Property as security for any other loan without the prior written consent of Beneficiary, which may be granted or withheld in Beneficiary's sole discretion; provided, however, that, if the Loan is simultaneously paid in full, and if the liens and security interests of the Mortgage and other Loan Documents will simultaneously be released from the Property, Beneficiary shall grant its consent to a new loan made by an institutional lender and secured by a first-lien mortgage encumbering the Property (a "**Refinancing Loan**"), provided that (a) the holder of the Refinancing Loan enters into an agreement in substantially the form of this Agreement and reasonably satisfactory to Beneficiary, (b) the principal balance of the Refinancing Loan will not exceed the Maximum Principal Amount, and (c) all liens and security interests encumbering the Property shall be released from and terminated as to the Property upon payment by Beneficiary to such lender of the Payoff Amount (as hereinafter defined).

4. **Notice of Default.** Lender hereby covenants and agrees that, for any default or event of default specified as such in the Loan Documents (a "**Default**"), Lender shall give notice of such Default to Beneficiary in the manner and at the addresses set forth in the UOA, or at such other addresses of which Lender has been notified under the terms of this Agreement. After delivery of such notice, Beneficiary shall have the right, but not the duty, which may be exercised by written notice to Lender within ten (10) business days after receipt of such Default notice (the "**Cure Election Deadline**"), to cure any such Default on behalf of Owner within thirty (30) days after receipt of such notice, or if such Default is not a monetary Default and is susceptible of cure by Beneficiary but cannot reasonably be cured within such thirty (30) day period, then so long as Beneficiary commences a cure of such Default within such thirty (30) day period (and notifies Lender that it has done so), its cure period shall be extended for as long as reasonably necessary (not to exceed ninety (90) days) for it to diligently pursue the cure to completion. If Beneficiary elects to cure any such Default, Lender shall not invoke any of its remedies, express or implied, under the Loan Documents unless such Default remains uncured at the expiration of foregoing periods of time.

5. **Payment by Beneficiary.** Lender shall, at any time following a Default under the Loan Documents, release the liens and security interests of the Loan Documents encumbering the Property or any part thereof or interest therein upon payment to Lender by Beneficiary (or a designee of Beneficiary) of the "**Payoff Amount**," which is (A) before completion of the construction of the now planned dealership improvements on the Property (the "**Completion Date**"), an amount equal to the sum of \$1,060,590.19 and the total actual contract costs incurred to construct such improvements as of the date that Lender is delivered the Payoff Amount not to exceed \$16,250,000.00 (the "**Pre-Completion Amount**"), less the Discount, or (B) after the Completion Date, \$17,318,165.80 (the "**Post-Completion Amount**"), less the Discount, it being expressly understood that said release of collateral shall only apply to any lien or security interest applicable to the real property identified as the Property (including but not limited to fixtures), and shall not apply to any other security interest maintained by Lender in any other assets of Owner including, without limitation, any Other Properties. Beneficiary's rights under this **Section 5** shall be in addition to Beneficiary's right to cure a Default under **Section 4** hereof, but Beneficiary must exercise its rights in this **Section 5**, if at all, by notifying Lender in writing of its intent to do so on or before the later of the Cure Election Deadline or, if Beneficiary elects to cure any Default pursuant to **Section 4** above, the end of the longest period of time that Beneficiary has to cure such Default. The "**Discount**" means (A) the Pre-Completion Amount or the Post-Completion Amount, as the case may be, multiplied by (B) a fraction (i) the numerator of which is the total amount of principal payments made under the Loan as of the date that Lender is delivered the Payoff Amount, and (ii) the denominator of which is the Maximum Principal Amount as of the date hereof, *i.e.*, One Hundred Eight Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$108,750,000.00).

6. **Reserved.**

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7. Representations and Warranties. Lender hereby represents and warrants that, as of the date of this Agreement:

- (a) Lender has provided Beneficiary with a true, correct, and complete copy of the Loan Documents;
- (b) Lender is the sole holder of the Loan and the Mortgage and the same have not been assigned or pledged; and
- (c) Lender has full power and authority to enter into this Agreement and no approval of any participant or other third party is required.

8. Termination of Agreement. This Agreement shall automatically terminate and be of no further force and effect only (i) when all obligations under the Loan have been paid in full and the Mortgage has been released, (ii) upon a Transfer of fee title to all of the Property by Lender in accordance with **Section 5** hereof, or (iii) upon the expiration or termination of the UOA.

9. Transfer. In the event the Property is transferred from Owner to Beneficiary (or its Affiliate or a Designated Party) pursuant to the UOA and so long as Lender is paid the Payoff Amount, Lender shall not consider this a transfer of the Property from Owner which would trigger a default pursuant to any "due on sale" clause in the Mortgage. However, this exception shall not apply to a transfer of the Property to any other entity or to a transfer of the Property by Beneficiary to a third party without written consent from Lender. "**Transfer**" means any sale, transfer, assignment, conveyance, lease, or other disposition of the Property to a third party, whether direct or indirect, voluntary or involuntary, by operation of law or otherwise, except for (i) those by Lender to an Affiliate of Lender (or vice versa), or (ii) a taking by eminent domain.

10. Loan Modifications. Except as otherwise provided in this Agreement, Lender at any time, without the consent of, or notice to, Beneficiary, may do any one of the following:

- (a) change the manner, place, or terms of payment or change or extend the time of payment of, or increase, renew, exchange, amend, or alter, the terms of the Loan or any lien in any of the collateral securing the Loan or any guaranty of Loan or any liability of Owner or any guarantor or any liability incurred directly or indirectly in respect thereof (including, without limitation, any extension of the Loan), or otherwise amend, renew, exchange, increase, extend, modify, or supplement in any manner the Loan, the Mortgage or any Loan Document;
- (b) settle or compromise the Loan or any security therefor or any liability directly or indirectly incurred in respect thereof and apply any sums by whomsoever paid and however realized to any liability (including, without limitation, the Loan) in any manner or order; or
- (c) exercise or refrain from exercising any rights which Lender may have under the Loan, the Mortgage, or the Loan Documents and discontinue credit to Owner.

11. Notices. All notices or other communications provided for under this Agreement shall be in writing, signed by or on behalf of the Party giving the notice, and shall be deemed properly given and received (i) in the case of notices to Beneficiary, as of the second business day after deposit with Federal Express or a similar overnight courier service, delivery charges prepaid, or (ii) in the case of notices to any other Party, as of the immediately following business day after deposit with Federal Express or a similar overnight courier service, delivery charges prepaid, addressed as follows:

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If to Beneficiary: General Motors LLC
Mail Code 482-A16-D71
100 Renaissance Center
Detroit, MI 48265
Attn: Manager – Strategic Network Analysis

with a copy to: Argonaut Holdings LLC
Retail Real Estate
Mail Code 482-C19-GRE
300 Renaissance Center
Detroit, MI 48265
Attn: President

and to: General Motors LLC
GM Legal Staff
Mail Code 482-C25-A68
300 Renaissance Center
Detroit, MI 48265
Attn: Real Estate Counsel

If to Lender: MERCEDES-BENZ FINANCIAL SERVICES USA LLC
35555 W. Twelve Mile Road, Suite 100
Farmington Hills, Michigan 48331
Attention: Dealer Credit Department, Real Estate Manager Attn:

with a copy to: DICKINSON WRIGHT PLLC
2600 West Big Beaver Rd., Suite 300
Troy, Michigan 48064
Attention: Attorney in Charge of MERCEDES-BENZ
FINANCIAL SERVICES USA LLC Matters

If to Owner: MURGADO MW PROPERTIES, LLC
665 SW 8th Street
Miami, Florida 33130
Attention: Mario Murgado

with a copy to: KURKIN FOREHAND BRANDES LLP
18851 NE 29th Avenue, Suite 303
Aventura, Florida 33180
Attention: Melissa Munchick, Esq.

12. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

13. **Governing Law.** This Agreement shall be construed under and governed by the laws of the State of Illinois without regard to any conflict or choice of law principles.

14. **Severability.** If any provision of this Agreement is held invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

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15. **Amendments.** This Agreement cannot be amended or modified without Lender's and Beneficiary's written consents but may be without Owner's if such amendment or modification does not materially increase Owner's liabilities or materially decrease Owner's rights hereunder, and any amendment or modification that does so also requires Owner's written consent.

16. **Captions.** The section titles in this Agreement are for convenience only and shall not be deemed to modify the sections of which they are a part.

17. **Waivers.** No right under this Agreement may be waived except by written instrument executed by the Party waiving such right. No waiver of any breach of this Agreement shall be deemed a waiver of any preceding or succeeding breach of this Agreement.

18. **Judicial Interpretation.** This Agreement shall not be more strictly construed against a Party because it was drafted in whole or in part, by or on behalf of such Party.

19. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute a duplicate original, but all of which together shall constitute one and the same instrument.

20. **Prevailing Party.** If Beneficiary or Lender commences an action against the other (or the other's Affiliates) to enforce the terms of, or resolve a dispute concerning, this Agreement, the non-prevailing Party will upon demand promptly pay to the prevailing Party all costs and expenses incurred by such prevailing Party in connection therewith, including reasonable attorneys' fees.

21. **Entire Agreement.** This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof (except, to avoid doubt, for the UOA as among Beneficiary, Owner, and Dealer Company, as applicable). There are no oral understandings, terms, or conditions, and neither Party has relied upon any representations, express or implied, not contained herein. All prior understandings, terms, or conditions with respect to the matters addressed herein are deemed merged into this Agreement.

22. **Exercise Remedies.** If Beneficiary, or any Person for or on behalf of Beneficiary who is permitted to, exercises any right under **Section 4** or **5(a)** above, then (A) Beneficiary shall have hereunder against Owner and Dealer Company all those rights and remedies that Beneficiary has under Section 7.2 of the UOA as if an Event of Default had occurred (including, without limitation, interest on the Exercise Costs, as defined below, at the rate specified in such Section 7.2), (B) Owner shall, on demand, promptly reimburse Beneficiary (or such Person) for any cost expended or other liability incurred in connection with such exercise (the "**Exercise Costs**"), (C) the exercise of any right under **Section 5(a)** shall be deemed an additional Triggering Event under the UOA, and (D) Beneficiary shall have the right to offset the Exercise Costs against any amount owed by Beneficiary (or any Affiliate of Beneficiary) to Owner, Dealer Company, or any Affiliate of either, including, without limitation, against the purchase price or the rent payable under the UOA if Beneficiary exercises its rights to buy or lease the Property thereunder. All such rights and remedies shall be cumulative, and Owner and Dealer Company shall be jointly and severally liable for any duties and liabilities resulting from Beneficiary's exercise thereof.

[Signature Page Follows]

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IN WITNESS WHEREOF, the Parties have executed this Intercreditor and Subordination Agreement as of the date first above written.

LENDER:

MERCEDES-BENZ FINANCIAL SERVICES USA LLC, a
Delaware limited liability company

By: Farrah Vaughn-Dixon
Name: Farrah Vaughn-Dixon
Title: Regional Dealer Credit Manager

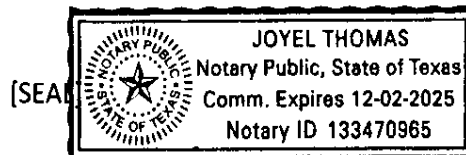
STATE OF TX)
)ss.
COUNTY OF Tarrant)

The foregoing instrument was acknowledged before me this 16 day of March, 2023 by Farrah Vaughn-Dixon, the Regional Dealer Credit Manager of MERCEDES-BENZ FINANCIAL SERVICES USA LLC, a Delaware limited liability company, on behalf of said limited liability company, who is personally known to me or who has produced proof of identity as identification and who did (did not) take an oath.

Joyel Thomas
Print Name: Joyel Thomas

Notary Public

My Commission expires: 12-02-2025



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BENEFICIARY:

GENERAL MOTORS LLC, a Delaware limited liability company

Execution Recommended
Real Estate
By JM

By: Debra H. Hoge
Name: _____
Title: Debra H. Hoge
Global Director
Real Estate

STATE OF MICHIGAN)
)ss.
COUNTY OF Wayne)

The foregoing instrument was acknowledged before me this 16th day of March, 2023, by Debra H. Hoge, the Director of GENERAL MOTORS LLC, a Delaware limited liability company, on behalf of said company, who is personally known to me or who has produced N/A as identification and who did (did not) take an oath.

Kathleen M. Rentenbach

Print Name: _____ [SEAL]

Notary Public

My Commission expires: _____

KATHLEEN M. RENTENBACH
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES Sep 22, 2028
ACTED IN COUNTY OF Wayne

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OWNER:

Murgado MW Properties, LLC, a Delaware limited liability company

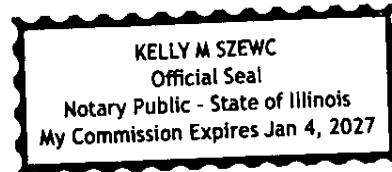
By: [Signature]
 Name: Mario Murgado
 Title: Manager

STATE OF IL)
)ss.
 COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 16 day of March, 2023 by Mario Murgado, the manager of Murgado MW Properties, LLC, a Delaware limited liability company, on behalf of said limited liability company, who is personally known to me or who has produced ID as identification and who did (did not) take an oath.

[Signature]
 Print Name: Kelly M SzeWC
 Notary Public
 My Commission expires: 01-04-2027

[SEAL]



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Dealer Company irrevocably, absolutely, and unconditionally becomes a party to this Agreement but only with respect to **Section 22** hereof, and so agrees to be bound by all the terms and conditions of such Section.

DEALER COMPANY: Murgado Motor
Works, LLC
 [], [a/an]
 a Delaware limited liability
 company

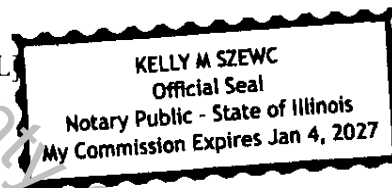
By: [Signature]
 Name: Mario Murgado
 Title: Manager

STATE OF IL)
)ss.
 COUNTY OF Cook)

The foregoing instrument was acknowledged before me this 16 day of March 2027, by Mario Murgado, the manager of [KS], [a/an], on behalf of said [M], who is personally known to me or who has produced ID as identification and who did (did not) take an oath.

[Signature]
 Print Name: Kelly Szwed
 Notary Public
 My Commission expires: 01-04-2027

[SEAL]



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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

THAT PART OF THE EAST 20 RODS OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 12, TOWNSHIP 42 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID NORTHEAST 1/4 OF THE SOUTHWEST 1/4; THENCE SOUTH 00 DEGREES, 00 MINUTES, 45 SECONDS EAST ALONG THE EAST LINE OF SAID NORTHEAST 1/4 OF THE SOUTHWEST 1/4, FOR A DISTANCE OF 1256.54 FEET TO THE NORTH RIGHT OF WAY LINE OF ILLINOIS STATE ROUTE 68 AS ESTABLISHED BY COOK COUNTY CIRCUIT COURT CASE 12-L-51373; THENCE SOUTH 87 DEGREE, 50 MINUTES, 38 SECONDS WEST ALONG THE SAID NORTH RIGHT OF WAY LINE, 17.51 FEET TO A POINT OF BEGINNING; THENCE CONTINUING SOUTH 87 DEGREE, 50 MINUTES, 38 SECONDS WEST ALONG THE SAID NORTH RIGHT OF WAY LINE, 311.74 FEET TO A POINT ON THE WEST LINE OF THE EAST 20 RODS AFORE MENTIONED; THENCE NORTH 00 DEGREES, 00 MINUTES, 37 SECONDS EAST ALONG SAID WEST LINE, 430.71 FEET; THENCE SOUTH 89 DEGREE, 59 MINUTES, 23 SECONDS EAST, 311.35 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES, 45 SECONDS EAST, 418.93 FEET TO THE PLACE OF BEGINNING, CONTAINING 3.037 ACRES MORE OR LESS, ALL IN COOK COUNTY, ILLINOIS.

PIN: 01-12-301-021-0000

18 E Dundee Rd
Barrington, IL 60010