

## Americas Credit Derivatives Determinations Committee Meeting Statement – June 22, 2020<sup>1</sup>

### DC Issue Number 2020052502

#### Resolution of Challenge

The Americas Credit Derivatives Determinations Committee (the **Americas DC**) met on June 22, 2020 to Resolve a challenge submitted by an Eligible Market Participant on June 15, 2020 (the **Challenge**) to the inclusion of certain letter of credit disbursements (the **LC Disbursements**) documented under the Credit Agreement (the **Credit Agreement**) dated as of December 13, 2019 by and among The Hertz Corporation (the **Reference Entity**), as Company, the lenders party thereto and Goldman Sachs Mortgage Company, as Administrative Agent and Issuing Lender.

Under Section 11.2(b) of the 2014 Definitions, in connection with Physical Settlement, "Buyer shall be deemed to represent to Seller ... that, unless Seller has received an indemnity acceptable to Seller from Buyer with respect to the following, Delivery of [any] Deliverable Obligations to Seller and transfer of such Deliverable Obligations by Seller to a third party will not require or cause Seller to assume, and will not subject Seller to, any obligation, liability or commitment to lend additional funds".<sup>2</sup>

The Challenge noted that Section 10.04(b)(ii)(B) of the Credit Agreement provides that "each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement". Although the Challenge did not challenge whether the LC Disbursements satisfied the Deliverable Obligation Category or Deliverable Obligation Characteristics, the Challenge specifically queried whether the LC Disbursements could be validly Delivered in an Auction without a transferee becoming subject to an "obligation, liability or commitment to lend additional funds".

The Americas DC noted that pursuant to Section 3.3(g)(ii) of the DC Rules, the Americas DC may Resolve by a Majority "any specific assignment, novation or other document or any other action that may be necessary, customary or desirable and reasonably requested by either party under a Relevant Transaction in connection with Buyer's Delivery".<sup>3</sup> In order to clarify the method of Delivery of the LC Disbursements, the Americas DC therefore Resolved to publish a form of assignment and assumption agreement (the **Form Assignment Agreement**) that must be used by any Buyer that Delivers its rights and obligations under the Credit Agreement, including the LC Disbursements.

Because the Credit Agreement provides that an "Assignment and Assumption" means "an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 10.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent", such Form Assignment Agreement has been agreed with the Administrative Agent and Issuing Lender and will be executed by such parties. The Form Assignment Agreement clarifies that

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<sup>1</sup> The Coverage Election in respect of the DC Question is for both (a) the 2014 ISDA Credit Derivatives Definitions (the **2014 Definitions**) and (b) the 2003 ISDA Credit Derivatives Definitions, as supplemented by the 2009 ISDA Credit Derivatives Determinations Committees, Auction Settlement and Restructuring Supplement (the **Updated 2003 Definitions**, and together with the 2014 Definitions, the **Definitions**), each as published by the International Swaps and Derivatives Association, Inc. (**ISDA**). Each capitalized term used but not defined in this Statement has the meaning specified in the Credit Derivatives Determinations Committees Rules (September 28, 2018 version, as amended as of the date hereof) (the **DC Rules**), the Updated 2003 Definitions, or the 2014 Definitions, as applicable.

<sup>2</sup> Section 9.2(b) of the Updated 2003 Definitions is in relevant part identical.

<sup>3</sup> See also Section 3.3(j) of the DC Rules (providing that a "Convened DC may Resolve by a Supermajority the documentation customarily used in the relevant market for Delivery of such Loan at that time, including any market advisory, and any amendments to such documentation to the extent necessary in order to preserve the economic equivalent, as closely as practicable, of the delivery and payment obligations of the parties under the 2014 Definitions").

"Assignor, Assignee and Issuing Lender each agrees that (a) with respect to any LC Disbursements made by Issuing Lender pursuant to a Participated Letter of Credit, the Issuing Lender shall not be entitled to request repayment from Assignee, and (b) as a result of purchasing and assuming the Assigned Interest, the Assignee shall not assume, and will not be subject to, and the Issuing Lender hereby indemnifies Assignee against, any obligation, liability or commitment to lend additional funds (including any outstanding contingent commitment)." The Administrative Agent and Issuing Lender also consent to any subsequent assignment by the Assignee that is subject to the same terms and conditions as the Form Assignment Agreement.

The Form Assignment Agreement is available from the DC Secretary together with the Credit Agreement and related documents, on the DC Website.