THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Hon. B. Alex Hyman, Circuit Court Judge

Case No. 2020-CP-40-01934
Appellate Case No. 2025-000063

RECEIVED
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SC Court of Appeals

Stivers Brothers Automotive, Inc. ..... Respondent,

v.

W. Warner Peacock and Peacock Automotive, LLC..... Appellants.

RECORD ON APPEAL

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP4001934

Stivers Brothers Automotive Inc
PLAINTIFF(S)

W Warner Peacock et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Following a hearing on March 23, 2021, conducted via Cisco WebEx,

Plaintiff's Motion for Judgment on the Pleadings (filed on 2/5/21) is DENIED.

Defendants' Motion for Judgment on the Pleadings (filed on 12/9/20) is DENIED.

Defendants' Motion to Seal (filed on 12/4/20) is GRANTED, and the two Asset Purchase Agreements in question shall be subject to a confidentiality order which is to be entered by the Court.

Defendants' Motion for Summary Judgment (filed on 12/4/20) contains numerous arguments. The motion is DENIED as to Plaintiff's alleged failure to prove or to mitigate damages. The remainder of the motion is TAKEN UNDER ADVISEMENT.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/24/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2021 Mar 24 1:07 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Richland Common Pleas

Case Caption:	Stivers Brothers Automotive Inc vs W Warner Peacock , defendant, et al
Case Number:	2020CP4001934
Type:	Order/Electronic Form 4

So Ordered

Jocelyn Newman

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP4001934

Stivers Brothers Automotive Inc
PLAINTIFF(S)

W Warner Peacock et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

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NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Defendant's motion for partial summary judgement came before the Court on May 23, 2023. Defendant's motion is DENIED.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/31/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2023 Jul 31 3:56 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

Court Reporter:

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ELECTRONICALLY FILED - 2023 Jul 31 3:56 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

Richland Common Pleas

Case Caption: Stivers Brothers Automotive Inc vs W Warner Peacock , defendant, et al

Case Number: 2020CP4001934

Type: Order/Electronic Form 4

15th Circuit Resident Judge

s/ B. Alex Hyman

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CASE NO. 2020-CP-40-01934
	)	
STIVERS BROTHERS AUTOMOTIVE, INC.,	)	
	)	
Plaintiff,	)	**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON THE MEASURE OF DAMAGES AND DENYING DEFENDANTS' MOTION TO SEAL CERTAIN FINANCIAL INFORMATION**
	)	
v.	)	
	)	
W. WARNER PEACOCK and PEACOCK AUTMOTIVE, LLC,	)	
	)	
Defendants.	)	
	)	

INTRODUCTION

This matter came before me at a term of Richland CPNJ court on May 23, 2023, for a virtual hearing via Cisco Webex. The case involves Defendants' alleged breach of contract in failing to consummate the purchase of two Columbia-area automobile dealerships. Four motions were pending before the Court for decision in this highly contested case, as follows:

1. Plaintiff's motion to compel discovery related to communications between Defendants and a third-party that eventually purchased Defendant Peacock Automotive, LLC's South Carolina dealerships;
2. Plaintiff's motion for partial summary judgment on a declaratory judgment action to determine how damages will be quantified in the underlying case, and more specifically that damages must be determined at the time of the breach and not subject to subsequent economic events;
3. Defendants' motions to seal financial information about the price of an allegedly similarly situated transaction when Defendant Peacock Automotive, LLC sold one of its South Carolina dealerships: and,
4. Defendants' motion for partial summary judgment asking the Court to find Plaintiff had no damages in the alleged breach because it actually profited from Defendants' actions in allegedly breaching the contract.

At the hearing attorney J. Michael Baxley, Esq. appeared on behalf of the Plaintiff and Bradford N. Martin, Esq. appeared on behalf of the Defendants.

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Two of the motions were decided at the time of the hearing and the decision announced from the bench, this Order restates those already-made decisions. After carefully considering the memoranda and arguments of counsel, the Court GRANTED the Plaintiff's motion to compel (subparagraph 1 above) because under the broad language of Rule 26(b), SCRCP, as to the permitted scope of discovery, the Court finds this requested information is relevant to the issue of Defendants' intentions in the transactions that gave rise to this litigation. The Court ordered the Defendants to respond in full to the Plaintiff's Second Set of Interrogatories and Third Request to Produce, including but not limited to, the requests for records, communications, and other documents related to the sale of all of Defendant Peacock Automotive, LLC's South Carolina assets. The Court ordered the Defendants to comply with its ruling within sixty (60) days of May 23, 2023.

Further, Defendants' motion for partial summary judgment on the issue of damages (subparagraph 4 above) was DENIED at the time of the hearing. Plaintiff's counsel raised the issue that the motion was barred by Rule 43(l), SCRCP, having already been heard, but the Court rejected that argument and agreed to hear the motion. After carefully considering the memoranda and arguments of counsel, this Court found there exist genuine issues of material fact regarding the Plaintiff's recoverable damages, and on that basis, denied Defendants' motion.

At the conclusion of the hearing, the Court advised counsel that two motions would be taken under advisement (subparagraphs 2 and 3 above). After further consideration and review of the facts, prevailing law, and arguments of counsel, the Court hereby GRANTS Plaintiff's motion for partial summary judgment on the issue of damages and DENIES Defendants' motion to seal certain financial information. The remainder of this Order focuses upon those two issues.

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PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

As stated in the opening of this Order, this litigation arises out of Defendant Peacock Automotive, LLC's alleged breach of two asset purchase agreements ("APAs"), one for the purchase of the Plaintiff's Chevrolet dealership and the other for the Plaintiff's Hyundai/Genesis dealership, both located in Richland County. Each APA provided for the payment of THREE MILLION FIVE HUNDRED THOUSAND DOLLARS ($3,500,000.000) for a total of SEVEN MILLION DOLLARS ($7,000,000.00), in addition to the purchase price of certain new motor vehicle, certain service loaners, all fixed assets, certain parts and accessories, and certain other assets.

The APAs were executed by the Plaintiff and Defendant Peacock Automotive, LLC on January 7, 2020 (the "effective date"). Each APA required Defendant Peacock Automotive, LLC to enter into an assignment of the lease with the owner of the real property upon which the dealerships operated. Each APA required Defendant Peacock Automotive, LLC to submit applications to the manufacturers and obtain approvals no later than 105 days after the effective date in order for the transactions to close. In correspondence dated March 27, 2020, Defendant Peacock Automotive, LLC informed the Plaintiff of its decision to terminate the APAs.

The Plaintiff filed a motion for partial summary judgment and a memorandum in support on March 21, 2023. The Plaintiff asserted that the Court should find, as a matter of law, that the appropriate measure of damages associated with the alleged breach of the APAs is the "market measure" of damages, or the difference between the contract price and the fair market value of the assets listed in the APAs at the time of the breach.[1]

[1] This "market measure" of damages "allows the breach victim to recover the market value of the very performance he should have had less the contract price…[w]hen the tables are turned and the buyer commits a total breach, the

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The "market measure" of damages has been applied in breach of contract actions involving the sale of commercial goods in South Carolina for over a century. Huguenot Mills v. George F. Jempson & Co., 68 S.C. 363, 47 S.E. 687 (1904)("Where the exact time for delivery is to be afterward fixed by the purchasers, the measure of damages is the difference between the contract price and the fair market value as the date of refusal to receive; for such refusal necessarily implies a refusal to fix a time and there is then a complete breach of the contract); Swift & Co v. Goldberg, 121 S.C. 190, 113 S.E. 358 (1922)("In order to ascertain the measure of damages, because the law has a measure in this state, and that measure is the difference between the contract price and that reasonable market value at the time and place of the breach of the contract").

Case law on breach of executory contracts for the sale of an ongoing business is scarce in South Carolina. However:

> "The general rule is that where the buyer repudiates an executory contract for sale, or wrongfully refuses to accept the property thereunder, the seller's measure of damages is the difference between the contract price and the market value at the time and place of delivery. To this rule, however, there are exceptions where required to afford to the seller indemnification for the loss ascribable approximately to the buyer's breach. ***One very general exception is to base the damages upon the market value of the property at the time of the breach, rather than at the time of delivery. Such exceptions may be essential where, as here-after pointed out, either by the terms of the contract or the subsequent agreement of the parties, the time for delivery is indefinite, or depends upon some affirmative act of the buyer***." 44 A.L.R. 215. [***emphasis added***].

The "market measure" of damages has been adopted in nearby jurisdictions in disputes involving the sale of an ongoing business; notably, in the State of Georgia. Turner Broadcasting System, Inc. v. McDavid, 303 Ga. App. 593, 693 S.E.2d 873 (Ct. App. Ga. 2010) involved the breach of an agreement to sell the Atlanta Hawks NBA franchise and Atlanta Thrashers NHL

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same principle applies to the seller's damages claims, but the seller shows damages by showing that the contract price is greater than the market value on the relevant date. Market measures are applied in chattel sales contracts (subject to some special rules of the U.C.C.), real estate sales, *and to analogous single-shot market transactions*." Dan B. Dobbs, Laws of Remedies § 12.2(2) (3d ed. 2018). [*emphasis added*].

franchise, as well as the operating rights to Phillips Arena. At trial, the jury was instructed that the proper measure of damages was "the difference between the contract price and the fair market value of the [assets] at the time the contract was breached." This instruction was affirmed on appeal. More distant jurisdictions have likewise adopted the "market measure" of damages in actions involving the breach of a contract for the sale of an ongoing business. *See* Peery v. Hansen, 120 Ariz. 266, 585 P.2d 574 (Ct. App. Ariz. 1978); Redmond v. Prosper, Inc., 364 So.2d 812 (Fla. Dist. Ct. App. 1978); Wickman v. Opper, 188 Cal.App.2d. 129 (Cal. 1961); Turner v. Shalberg, 70 S.W.3d 653 (2002).

D.G. Porter, Inc. v. Fridley, 373 N.W.2d. 917 (1985) involved the breach of a contract for the sale of a bar. The Supreme Court of North Dakota noted "the general rule is that the seller's remedy for the buyer's breach of an executory contract to purchase an ongoing business is to recover damages for the difference between the contract price and the fair market value of the business on the date of the breach." 373 N.W.2d at 924. The Fridley Court explicitly addressed the fact that the seller retained possession of the assets after the breach, as the Plaintiff has done in the present matter with its Hyundai/Genesis franchise. "By receiving this remedy, [the seller] will receive the equivalent of what he bargained for under the agreement: in addition to retaining the business he will receive an amount equal to the difference between the contract price of $250,000 and the value of the business on the date of [the buyer's] breach." 373 N.W.3d at 925.

Accordingly, this Court finds that the Plaintiff has established that there is no genuine issue of material fact that the appropriate measure of damages in an action involving the buyer's breach of an executory contract to purchase an ongoing business, regardless of whether the seller retains possession of the assets, is the "market measure" of damages. Therefore, the Plaintiff's measure

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of damages in this case for the alleged breach of the APAs shall be the difference between the contract price of the assets and their fair market value at the time of the breach.

In making this ruling, the Court is aware this alleged breach occurred at the height of the COVID-19 pandemic. At that moment in time, the future of the automobile sales industry nationwide was uncertain. Car sales had declined, customer traffic in dealerships was significantly low due to feared spread of disease, and many consumers were out of work. Subsequently, the federal government's Paycheck Protection Program was put in place, reviving the sales market and causing dealership values to significantly increase. To allow subsequent market fluctuations to influence damages at the time of a breach is unfair in this case particularly, but also would establish an untenable public policy allowing those who might breach a contract to await more favorable market conditions before determining damages. Such is not the longstanding law of this jurisdiction.

DEFENDANTS' MOTION TO SEAL

The Defendants filed a motion to seal and memorandum in support on May 20, 2022. This motion was filed in conjunction with the Defendants' Motion for Partial Summary Judgment on the grounds that the Plaintiff had no recoverable damages or that such damages have been fully mitigated.

The Defendants sought to file portions of affidavits under seal to the extent that they referenced the terms of the sale of Peacock Automotive's Columbia Hyundai franchise. According to the Defendants, these terms are subject to a Confidentiality Agreement.

Court records are presumptively open to the public under the common law, the First Amendment of the federal constitution, and the state constitution. Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 10, 630 S.E.2d 464, 469 (2006). Public access to court records may be restricted

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in certain situations, such as matters involving juveniles, legitimate trade secrets, or information covered by a recognized privilege. Id.

Pursuant to Rule 41.1(b), SCRCP, this Court must consider seven factors, including: (1) the need to ensure a fair trial; (2) the need for witness cooperation; (3) the reliance of the parties upon expectations of confidentiality; (4) the public or professional significance of the lawsuit; (5) the perceived harm to the parties from the disclosure; (6) why alternatives other than sealing the documents are not available to protect legitimate private interests as identified by this Rule; and (7) why the public interest, including, but not limited to, the public health and safety, is best served by sealing the documents.

This Court finds that sealing the relevant portions of the affidavits would not serve any of the above factors. While the Defendants are correct that the common law presumption of access may be overcome if competing privacy interests outweigh the presumption of access, that is not the case here. The Defendants' memorandum in support of their motion characterizes this matter as a breach of contact case between two businesses and not a matter that has an impact upon the public at large.

Furthermore, if this Court were to grant the Defendants' motion, it would contradict the Court's previous decision to grant the Plaintiff's motion to compel, which sought the disclosure of information related to the disposition of Defendant Peacock Automotive, LLC's South Carolina assets, including the Columbia Hyundai franchise.

For the foregoing reasons, the Defendants' motion to seal is DENIED.

CONCLUSION

IT IS THEREFORE ORDERED that the Plaintiff's motion for partial summary judgment be, and the same hereby is GRANTED.

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IT IS FURTHER ORDERED that the Defendants' motion to seal is DENIED.

THIS COURT'S PREVIOUS ORDERS from the bench and on the record to GRANT Plaintiff's motion to Compel certain Defendants' communications information and to DENY Defendants' motion for partial summary judgment as to damages are hereby restated.

AND IT IS SO ORDERED.

_____

The Honorable Alex B. Hyman
Presiding Judge

Conway, South Carolina

This _____ day of _____, 2023.

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Richland Common Pleas

Case Caption:	Stivers Brothers Automotive Inc vs W Warner Peacock , defendant, et al
Case Number:	2020CP4001934
Type:	Order/Summary Judgment

15th Circuit Resident Judge

s/ B. Alex Hyman

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP4001934

Stivers Brothers Automotive Inc
PLAINTIFF(S)

W Warner Peacock et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

On August 10, 2023, Defendants filed four motions to alter/amend Orders that the Court had previously entered in connection with four motions that came before the Court on May 23, 2023. This Order deals only with two of those already-decided motions: (1) Plaintiff's motion to compel discovery related to communications between Defendants and a third-party that eventually purchased Defendant Peacock Automotive, LLC's South Carolina dealerships and (2) Defendants' motions to seal financial information about the price of an allegedly similarly situated transaction when Defendant Peacock Automotive, LLC sold one of its South Carolina dealerships. With respect to those two motions, the Court DENIES Defendants' motions to alter/amend and affirms its previous decisions. As for the Defendants' two outstanding motions to alter/amend--Defendants' motion for partial summary judgement and Plaintiff's motion for partial summary judgement--the Court takes those motions under advisement.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/01/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2023 Nov 01 12:35 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Richland Common Pleas

Case Caption:	Stivers Brothers Automotive Inc vs W Warner Peacock , defendant, et al
Case Number:	2020CP4001934
Type:	Order/Electronic Form 4

15th Circuit Resident Judge

s/ B. Alex Hyman

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP4001934

Stivers Brothers Automotive Inc
PLAINTIFF(S)

W Warner Peacock et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

After careful consideration, Defendant's Motion to Alter or Amend the July 31, 2023 Order Granting Plaintiff's Motion for Summary Judgment and Defendant's Motion to Alter or Amend the July 31, 2023 Order Denying Defendants' Motion for Summary Judgment are respectfully denied.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/19/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2024 Dec 20 11:21 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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ELECTRONICALLY FILED - 2024 Dec 20 11:21 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

Richland Common Pleas

Case Caption: Stivers Brothers Automotive Inc vs W Warner Peacock , defendant, et al

Case Number: 2020CP4001934

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15th Circuit Resident Judge

s/ B. Alex Hyman

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CASE NO. 2020-CP-40-_____
STIVERS BROTHERS AUTOMOTIVE, INC.,	)	
Plaintiff,	)	
v.	)	
	)	**SUMMONS**
W. WARNER PEACOCK, MARY KAYE PEACOCK, KEN GRIFFEY, JR., JAY BRENNAN, and PEACOCK AUTOMOTIVE, LLC,	)	(declaratory judgment, breach of contract, violation of "RMDDA", tortious interference with contractual relations, and "veil piercing") (JURY TRIAL DEMANDED)
Defendants.	)	

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscriber at his office located at 7478 Carlisle Street, Post Office Box 1014, Irmo, South Carolina 29063, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

STUDEMEYER LAW FIRM, P.C.

By: s/J. Gregory Studemeyer
J. Gregory Studemeyer
SC Bar #5416
7478 Carlisle Street
Post Office Box 1014
Irmo, South Carolina 29063
803-393-4399
Attorney for the Plaintiff

Irmo, South Carolina
April 13, 2020

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CASE NO. 2020-CP-40-_____
STIVERS BROTHERS AUTOMOTIVE, INC.,	)	
Plaintiff,	)	
v.	)	**COMPLAINT**
W. WARNER PEACOCK, MARY KAYE PEACOCK, KEN GRIFFEY, JR., JAY BRENNAN, and PEACOCK AUTOMOTIVE, LLC,	)	
Defendants.	)	

The Plaintiff above named, complaining of the Defendants herein, would respectfully show unto the Court:

INTRODUCTION

1. The distribution of motor vehicles in South Carolina is regulated to prevent frauds, impositions, and other abuses upon citizens of South Carolina by manufacturers, distributors, dealers and their representatives doing business in South Carolina.

2. The Plaintiff has lawfully engaged in the business of selling and servicing new Chevrolet and Hyundai motor vehicles and used motor vehicles in Richland County, South Carolina since August 4, 2017, and its affiliated dealerships maintained a presence and lawfully conducted business in Richland, Lexington, and Sumter Counties, South Carolina from 1989 until 2011.

3. Peacock Automotive, LLC has engaged in the motor vehicle business in South Carolina under various names including NRAM Holdings, LLC, Coastal States Automotive

Group, LLC, and New River Auto Mall, LLC since March 26, 2007.

4. According to its website, Peacock Automotive, LLC currently operates Audi, Volkswagen, Subaru, Land Rover, Jaguar, Porsche, Genesis, Hyundai, Chrysler, Jeep, Dodge, RAM, and FIAT motor vehicle dealerships in Jasper County, Jaguar and Land Rover dealerships in Lexington County, and a Hyundai dealership in Richland County, South Carolina; Volkswagen, Hyundai, and Genesis dealerships and a Used Car & Truck Center in Savannah, Georgia; and a Ford dealership on the Maitland/Winter Park line just north of Orlando, Florida.

5. According to its website, Peacock Automotive, LLC operates as Peacock-Griffey Automotive in Florida.

6. According to its website, Major League Baseball Hall of Fame member, Ken Griffey, Jr., a resident of Orlando, is a shareholder [sic] in Peacock Automotive, LLC and Peacock-Griffey Automotive.

7. Peacock Automotive, LLC seeks the benefit of identifying its officers and shareholders [sic] under "Peacock by the people" on its website, and by allowing their names to be used for that purpose, those individuals must share the burden of Peacock Automotive, LLC's conduct.

8. Among "Peacock by the priorities" listed on its website, Peacock Automotive, LLC lists "Ethics and honesty" as its *second* priority.

9. As more fully set forth herein, Peacock Automotive, LLC has engaged in unethical and unlawful conduct in Richland County, South Carolina and has caused the Plaintiff to suffer significant monetary damages.

10. The Plaintiff brings this action for declaratory relief, equitable relief including specific performance, and for damages as a result of the foregoing unlawful acts.

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PARTIES

11. The Plaintiff is a domestic corporation, maintaining its principal place of business in the County of Richland, State of South Carolina.

12. According to Peacock Automotive, LLC's website, Defendants, W. Warner Peacock ("Warner Peacock") and Mary Kaye Peacock ("M.K. Peacock"), are residents of Beaufort County, State of South Carolina and Windermere, Florida.

13. Upon information and belief, Defendant, Ken Griffey, Jr. ("Griffey, Jr."), is a resident of Orlando, Florida.

14. Upon information and belief, Defendant, Jay Brennan ("Brennan"), is a resident of Orlando, Florida.

15. Defendant, Peacock Automotive, LLC ("Peacock Automotive"), is a limited liability company, organized and existing under the laws of the State of Florida, conducting business in the Counties of Jasper, Lexington, and Richland, State of South Carolina.

JURISDICTION AND VENUE

16. This Court has jurisdiction over the parties and the subject matter of this action pursuant to S.C. Code Ann. Sections 56-15-20, 36-2-802, and 36-2-803.

17. Venue is proper in Richland County pursuant to S.C. Code Ann. Sections 15-7-30(F)(1) and (2) since the Plaintiff maintained its principal place of business in Richland County at the time these causes of action arose and since the most substantial part of the act or omission giving rise to these causes of action occurred in Richland County. Venue is also proper under S.C. Code Ann. Section 56-15-140.

SUBSTANTIVE ALLEGATIONS

18. On January 7, 2020, the Plaintiff and Peacock Automotive entered into two

separate Asset Purchase And Sale Agreements ("APAs"), one for the assets of the Plaintiff's Chevrolet dealership located at 111 Newland Road, Columbia, South Carolina 29229, and the other for the assets of the Plaintiff's Hyundai dealership located at 101 Newland Road, Columbia, South Carolina 29229.

19. Both parties were sophisticated business entities, capable of assessing their respective risks with the transactions.

20. The Plaintiff entered into the APAs recognizing that the assets could increase in value or that the prospect of selling them could become less favorable.

21. Peacock Automotive entered into the APAs recognizing that the assets could decrease in value or that the prospect of acquiring them could become less favorable.

22. Each APA provided for the payment by Peacock Automotive to the Plaintiff of the sum of THREE MILLION FIVE HUNDRED THOUSAND DOLLARS ($3,500,000) for a total of SEVEN MILLION DOLLARS ($7,000,000) in addition to the purchase of certain new motor vehicles, certain service loaners, all fixed assets, certain parts and accessories, all unopened oil and grease drums and bulk oil and fluid, and certain work in process.

23. Representatives of the Plaintiff and Peacock Automotive had specific discussions concerning the Plaintiff's intention to acquire another dealership with the proceeds of the transaction.

24. Each APA likewise required Peacock Automotive to enter into an assignment of Lease Agreement with the owners of the Premises.

25. The current term of the Lease Agreement extends through December 24, 2024.

26. The Lease Agreement allows the Plaintiff to terminate on December 24, 2021, by providing written notice on or before December 24, 2020.

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27. The annual Base Rent payable under the Lease Agreement is One Million Two Hundred Fifty-Three Thousand Five Hundred Twenty and 84/100 Dollars ($1,253,520.84), payable in monthly installments equal to One Hundred Four Thousand Four Hundred Sixty and 07/100 Dollars ($104,460.07), in advance on or before the first day of each Lease Month during the Term.

28. In addition to the annual Base Rent payable under the lease, property taxes of One Hundred Seventy Three Thousand Eight Hundred Sixty Five and 25/100 Dollars ($173,865.25) and insurance premiums of One Hundred Seventeen Thousand Nine Hundred Fifty One and 69/100 Dollars ($117,951.69) are due and payable annually.

29. Each APA required Peacock Automotive to submit applications to the manufacturer within 20 days of receiving applications from the manufacturers and to use its best efforts in good faith to obtain required approvals at the earliest date practicable, but no later than one hundred and five (105) days after the effective date, January 7, 2020.

30. Each APA required Peacock Automotive to keep the existence of the APAs confidential, but Warner Peacock failed to do so.

31. Neither APA contained a "force majeure" clause.

32. On March 13, 2020, in response to the Covid-19 pandemic, the President of the United States declared that an emergency existed nationwide under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

33. On March 26, 2020, Ordinance No.: 2020-034, "An Emergency Order Declaring a Stay Home Stay Safe for the City of Columbia, South Carolina" ("the Ordinance") was issued by Mayor Stephen K. Benjamin and Columbia City Council.

34. The Ordinance provides that individuals "shall stay in their homes and not travel

through or congregate in the streets, sidewalks, waterways and/or public spaces in the City of Columbia, including establishments that hold a City of Columbia business licenses [sic] except for the purposes of working at or conducting business with the attached list of businesses (hereinafter "Essential Service" or "Essential Services").

35. Exhibit A to the Ordinance defines twelve types of "essential services" including, *inter alia*, vehicle sales and automotive repair.

36. Notwithstanding the plain language of the Ordinance and the exceptions thereto, on March 27, 2020, Warner Peacock provided written notice of termination of the APAs to the Plaintiff suggesting that the following conditions precedent to closing had not been met:

a. "We" do not believe the current conditions existing in the Columbia, SC area permit the Seller to comply with these requirements, as the Dealership's [sic] business cannot now or for the foreseeable future operate in the ordinary course;

b. Columbia's issuance of a stay in place order is an order of the type that qualifies pursuant to Section 16(h) to materially adversely affecting [sic] the Subject Assets; and

c. "We" have requested the February 2020 financial records and Seller has failed to provide such records.

37. In his notice of termination, Warner Peacock also requested that "Shutts Bowen LLP, in its capacity as escrow agent, return the $100,000 deposit which was made in connection with this proposed transaction".

38. On the same day, the South Carolina Attorney General issued an Opinion that local government cannot exercise the emergency powers delegated to the Governor by the General Assembly and that unauthorized exercise of such emergency powers could subject political subdivisions to liability at the behest of a private citizen with requisite legal standing.

39. As set forth herein, all of Warner Peacock's asserted reasons for termination were

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merely pretextual.

40. At all times, notwithstanding the Defendants' "belief", the Plaintiff has continued to operate in the ordinary course of business.

41. By its terms, the Ordinance does not apply to the Plaintiff's business.

42. Even if the Plaintiff was not excepted from the provisions of the Ordinance, the South Carolina Attorney General determined that the action taken by the Mayor and Council was not an authorized exercise of emergency powers delegated to the Governor by the General Assembly.

43. The Defendants have had electronic access to the Plaintiff's financial records since January 15, 2020.

44. The real reason for the Defendants' purported termination is the ongoing Covid-19 pandemic, notwithstanding the lack of a "force majeure" clause in the APAs.

45. The Defendants now wish to shift the burden they knowingly and voluntarily undertook in the APAs to the Plaintiff because closing on the transactions now appears less favorable to them.

46. The Defendants failed and refused and continue to fail and refuse to promptly submit to the manufacturers all forms, applications, and other documents which the manufacturers require to consider approval of the transactions.

47. The Plaintiffs will further show that Warner Peacock has raised new claims in an effort to avoid the commitments made to the Plaintiff, including an inability to arrange for inventory financing and an inability to speak with the Chevrolet Zone Manager, neither of which are included as conditions precedent in the nearly 30 pages of each APA drafted by counsel for the Defendants.

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48. On April 3, 2020, a demand for adequate assurance of performance was made to the Defendants pursuant to S.C. Code Ann. Section 36-2-609.

49. The Defendants have failed and refused and continue to fail and refuse to comply with their implied covenant of good faith and fair dealing and to provide adequate assurance of performance as requested.

FOR A FIRST CAUSE OF ACTION
(declaratory judgment)

50. Each and every previous allegation is realleged herein in the same manner and to the same extent as if repeated.

51. This cause of action is brought pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. Section 15-53-10, et seq.

52. The Plaintiff is a person interested under a written contract or other writing constituting a contract whose rights, status or other legal relations are affected by a statute and/or contract and seek to have determined questions of construction or validity arising under the statute and/or contract and obtain a declaration of rights, status or other legal relations thereunder.

53. In addition thereto, the issues herein are of such public importance as to require their resolution for future guidance.

54. As set forth herein, a real or actual controversy exists between the Plaintiff and the Defendants.

55. The Defendants, Warner Peacock, M.K. Peacock, Griffey, Jr., and Brennan, are "persons" as defined by S.C. Code Ann. Section 56-15-10(n) and all of the Defendants are "dealers" or "motor vehicle dealers" as defined by S.C. Code Ann. Section 56-15-10(h).

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56. The Plaintiff is a citizen of South Carolina entitled to protection from frauds, impositions, and other abuses by dealers or motor vehicle dealers as contemplated by 1972 S.C. Acts 2419, 1972 Act No. 1237 hereafter "Act No. 1237").

57. Based upon the foregoing, the Plaintiff is informed and believes that it is entitled to a declaration that the APAs between the Plaintiff and the Defendants remain valid and enforceable contracts, notwithstanding the Defendants' purported termination for pretextual reasons.

FOR A SECOND CAUSE OF ACTION
(breach of contract)

58. To the extent not inconsistent herewith, each and every previous allegation is realleged herein in the same manner and to the same extent as if repeated.

59. The Plaintiff and the Defendants entered into valid and binding contracts.

60. The Plaintiff elected to forgo an opportunity to purchase real estate in Richland County to relocate the assets and to exercise the right to early termination of the Lease Agreement in reliance upon the Defendants' obligations under the APAs.

61. The APAs have been partly carried into execution by the Plaintiff with the approbation of the Defendants.

62. The Plaintiff has performed its obligations under the APAs and remains able and willing to perform under the APAs.

63. The Defendants have breached the contracts, placing the Plaintiff in the untenable position of having to exercise its right to early termination of the Lease Agreement and selling the assets at a "fire sale" without a place of business, immediately acquiring real estate and trying to construct a facility on or before December 24, 2021, or continuing to pay rent, property taxes, and insurance while continuing to market the assets in the current environment, in the

wake of Warner Peacock's breach of the confidentiality provisions.

64. The Plaintiff has been damaged by the Defendants' breach and will continue to suffer damage in the future caused by the breach.

65. Both APAs provide for specific performance together with any other remedies at law or equity.

66. Both APAs provide that if any action shall be brought by any party to recover any sums hereunder, or for or on account of any breach of, or to enforce or interpret any of the covenants, terms or conditions of this Agreement, then the prevailing party shall be entitled to recover costs and expenses incurred in such action, including reasonable attorney's fees.

67. Based upon the foregoing, the Plaintiff is informed and believes that it is entitled to an order requiring specific performance of each APA, an award of actual damages if specific performance can not be had, and an award of costs and expenses including a reasonable award of attorney's fees.

FOR A THIRD CAUSE OF ACTION
(violation of the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act "RMDDA")

68. To the extent not inconsistent herewith, each and every previous allegation is realleged in the same manner and to the same extent as if repeated.

69. Among other things, Act No. 1237, now codified in Chapter 15 of Title 56 of the South Carolina Code as Regulation of Manufacturers, Distributors, and Dealers ("RMDDA"), includes certain definitions and declares certain conduct to be unlawful.

70. Specifically, S.C. Code Ann. Section 56-15-30 declares unfair methods of competition and unfair or deceptive acts or practices as defined by Section 56-15-40 to be unlawful.

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71. More specifically, S.C. Code Ann. 56-15-40(1) deems it a violation of Section 56-15-30 for, among others, a dealer to engage in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to any of the parties or to the public.

72. As set forth herein, the Defendants have engaged in unfair methods of competition and unfair and deceptive acts or practices declared unlawful by S.C. Code Ann. 56-15-30.

73. Moreover, the Defendants have engaged in malicious action which is arbitrary, in bad faith, or unconscionable and which has caused and continues to cause damage to the Plaintiff.

74. The Defendants acts were unreasonable, capricious or nonrational, not according to any legitimate reason or judgment and dependent upon will alone.

75. The Defendants engaged in conduct designed to deceive or mislead prompted by an interested or sinister motive, including but not limited to, using the current environment and threatening to breach the APAs to renegotiate the terms of the APAs.

76. Based upon the foregoing, the Plaintiff is informed and believes that it is entitled to judgment for double the actual damages by it sustained, the cost of suit, including a reasonable attorney's fee, and an award of punitive damages, not to exceed three times the actual damages.

FOR A FOURTH CAUSE OF ACTION

77. To the extent not inconsistent herewith, each and every previous allegation is realleged herein in the same manner and to the same extent as if repeated.

78. At all times herein mentioned, Warner Peacock had intimate knowledge of all of the facts and circumstances concerning the APAs between the Plaintiff and Peacock Automotive.

79. Warner Peacock has intentionally procured the breach of the APAs between the Plaintiff and Peacock Automotive.

80. Warner Peacock has no justification for interfering in the contractual relations between the Plaintiff and Peacock Automotive.

81. As a result of Warner Peacock's interference, the Plaintiff has suffered and will continue to suffer actual and consequential damages.

82. Warner Peacock has wantonly, willfully, and maliciously interfered with the Plaintiff's contractual relations with Peacock Automotive.

83. Based upon the foregoing, the Plaintiff is informed and believes that it is entitled to judgment against Warner Peacock for both actual and punitive damages.

FOR A FIFTH CAUSE OF ACTION
(veil piercing)

84. To the extent not inconsistent herewith, each and every previous allegation is realleged herein in the same manner and to the same extent as if repeated.

85. The individual Defendants have attempted to use Peacock Automotive to protect fraud, justify wrong, or defeat public policy.

86. The interests of Peacock Automotive and the individual Defendants are identical, and one is the alter ego of the other.

87. This Court should inquire into the observation of formalities by Peacock Automotive including but not limited to whether it was adequately capitalized, paid dividends, was or is insolvent, siphoning of funds by the dominant shareholders or members, whether other officers or directors performed their official functions, whether it maintained appropriate records, and whether it was merely a façade for the operations of the dominant shareholders or members.

88. The Plaintiff will show that allowing Peacock Automotive to benefit from marketing the celebrity status of at least one of its shareholders [sic] without requiring the individual Defendants to share in the burden of its conduct would result in injustice and

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fundamental unfairness.

WHEREFORE, the Plaintiff prays for declaratory relief, equitable relief in the form of specific performance, for an award of both actual and punitive damages, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

STUDEMEYER LAW FIRM, P.C.

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FIFTH JUDICIAL CIRCUIT**
COUNTY OF RICHLAND	)	
	)	C/A NO. 2020-CP-40-01934
STIVERS BROTHERS AUTOMOTIVE, INC.,	)	
	)	**ANSWER AND COUNTERCLAIMS**
	)	**OF DEFENDANTS PEACOCK**
Plaintiff,	)	**AUTOMOTIVE, LLC AND**
v.	)	**W. WARNER PEACOCK**
	)	
W. WARNER PEACOCK, MARY KAYE PEACOCK, KEN GRIFFEY, JR., JAY BRENNAN, and PEACOCK AUTOMOTIVE, LLC,	)	
Defendants.	)	

Defendants Peacock Automotive, LLC (hereafter "Peacock Automotive"), and W. Warner Peacock answering and counterclaiming to the Plaintiff's Complaint, would respectfully show the Court as follows:

INTRODUCTION AND UNDERLYING FACTS

1. Peacock Automotive has built a strong reputation by providing high quality vehicle sales and service to the consumers in the state of South Carolina.

2. In its effort to provide better service in the Columbia, South Carolina area, Peacock Automotive explored the potential purchase of two dealerships from Plaintiff, one a Chevrolet dealership and the other a Hyundai/Genesis dealership. Critical to any potential purchase is the honest and fair disclosure by the selling dealership of the financial condition and net profit of the business and the continued running of the business with best efforts and in good faith until closing without any loss in goodwill caused by seller or an unexpected intervening event.

3. Plaintiff assured Defendant Peacock Automotive through several representations, that it was operating two highly successful dealerships (Chevrolet and Hyundai/Genesis) making

approximately $2 million dollars of net profits each year.

4. The purchase price of any dealership in the automotive industry crucially relies upon the honesty and integrity of the seller in representing the true value of his dealerships and presenting honest and accurate financial information that does not misrepresent their net profits and financial health. Trusting the representations made by Plaintiff, Peacock Automotive signed two contingency contracts (the "Asset Purchase Agreements") on January 7, 2020 for the potential purchase of the Chevrolet and Hyundai/Genesis dealerships.

5. Critical to the closing of such an important financial transaction is the protection, in good faith, of the selling dealerships' net profitability and goodwill, which requires the selling party to operate its business during the interim period in a manner that protects the most valuable assets being purchased.

6. The importance of Plaintiff's conducting the business in a way that protects Peacock Automotive was so important that the parties agreed specifically in the Asset Purchase Agreements (the "APAs") that Plaintiff would continue to operate these businesses in the ordinary course and promise to maintain and preserve the business and goodwill of the dealerships (Section 15(a) and 15 (b) of the APAs). Plaintiff further promised in writing that it would bear the risk of loss or damage to any of the dealerships' Subject Assets until closing, including any loss occasioned by an unexpected intervening event (Section 24(q)).

7. While Peacock Automotive has every right to rely upon the honesty and integrity of Plaintiff and its required duty to perform the APAs in good faith and fair dealing, the APAs themselves provided further protection in that Plaintiff promised to provide full access to its books and records and a true and accurate representation of its net profit and financial condition (Section 15(c) and Section 16(f) of the APAs).

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8. Plaintiff has not kept its word regarding its financial position. This first surfaced when Peacock Automotive discovered that Plaintiff had improperly inflated the value of its fixed assets early in the negotiations.

9. Plaintiff continued its disinformation campaign by failing to provide the financial records for November and December, prior to Peacock Automotive's signing of the APAs.

10. Plaintiff never provided the November financial records and did not provide December financial records until February, and January financial records only came at the end of the month of February. Peacock Automotive's review of which indicated that Plaintiff was not operating in the ordinary course or preserving the net profitability and represented goodwill of the dealerships.

11. Peacock Automotive requested the February financials numerous times which Plaintiff promised to do so, however it never honored its word. Peacock Automotive suspects that these February financials would prove that Plaintiff was operating outside the ordinary course and was failing to preserve the net profitability and goodwill of the business.

12. By March, the world had changed since the signing of the APAs in early January. The Coronavirus (COVID-19) pandemic had infected over a million people, killing thousands, and upending ordinary life. Slowing the spread of COVID-19 and minimizing human suffering was of utmost importance. As a result, state-imposed "shelter-in-place" laws and mandated closure of non-essential retail businesses became the new normal. This obviously impacted the average consumer, making even essential businesses unable to operate at expected levels. In the ordinary course, such a devastating and unanticipated circumstance caused irreparable damage to Plaintiff's business assets, a risk of loss that Plaintiff promised to bear (Section 24(q)).

13. When Plaintiff continued to break its word, Peacock Automotive had no alternative

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but to terminate the APAs on March 27, 2020.

14. Plaintiff, instead of acknowledging its responsibilities, has decided to sue, including several individuals personally who were not even parties to the APAs. In response, Peacock Automotive seeks justice in placing the responsibility where it belongs: with Plaintiff.

FOR A FIRST DEFENSE TO ALL CAUSES OF ACTION
(AS TO ALL DEFENDANTS)

15. All allegations not expressly admitted are denied.

16. Peacock Automotive admits that the motor vehicle business is not only subject to legislative directives but also that each contract in South Carolina implies the duty of good faith and fair dealing, in answer to Paragraph 1.

17. Peacock Automotive admits that Plaintiff operates dealerships in Richland County, in answer to Paragraph 2.

18. Peacock Automotive admits that it has conducted significant business with the South Carolina public for many years, under various business names in answer to Paragraph 3.

19. Peacock Automotive admits that it successfully has operated several car dealerships in answer to Paragraph 4.

20. The allegations of Paragraph 5 are admitted.

21. Answering Paragraph 6, as a limited liability company Peacock Automotive, LLC has owners of membership shares commonly referred to as "members" or "shareholders." The reference to "shareholders" on its website is a common usage meaning "owners." George Kenneth Griffey, Jr. is a member of Swingman NRAM, LLC, which is a member of Peacock Automotive, LLC.

22. The allegations of Paragraph 7 are denied.

23. Answering Paragraph 8, Peacock Automotive admits that it lists its priorities on its

website as being: 100% customer satisfaction; Ethics and honesty; Empowered, helpful employees; long-term good over-short term profits; and Commitment to community. These priorities are of equal importance.

24. The allegations of Paragraph 9 are denied.

25. Peacock Automotive, not Plaintiff, has been damaged, due to Plaintiff's broken promises; Plaintiff has rejected specific performance but instead pursues damages in this lawsuit, in answer to Paragraph 10.

26. The allegations of Paragraph 11 are admitted.

27. The allegations of Paragraph 12 are denied.

28. The allegations of Paragraph 13 are admitted upon information and belief.

29. The allegations of Paragraph 14 are admitted upon information and belief.

30. The allegations of Paragraph 15 are admitted.

31. Defendants admit so much of Paragraph 16 as it alleges this Court has jurisdiction over Peacock Automotive, LLC and Warner Peacock. The remaining allegations of Paragraph 16 are denied.

32. Defendant does not have sufficient information to admit or deny the allegations of Paragraph 17 and therefore denies them.

33. Peacock Automotive signed the APAs for the dealerships listed in Paragraph 18 in reliance upon Plaintiff keeping its oral and written word, in answer to Paragraphs 18 and 19.

34. Peacock Automotive entered into the APAs upon Plaintiff's oral and written assurances that it would operate the dealerships in the ordinary course and maintain and preserve the business and goodwill, and bear any risk of loss or damage to its assets, which Plaintiff has failed to do, all in answer to Paragraphs 20 and 21.

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35. Peacock Automotive admits the amount of the Purchase Price in the APAs, which was based on the honest and faithful representations and performance of the APAs by Plaintiff, in answer to Paragraph 22.

36. Defendants admit only that Edward Stivers, a representative of Plaintiff, mentioned in passing Plaintiff's purchase of another dealership, not specifying whether such had occurred already or was to occur, and Defendants deny engaging in any specific discussions concerning Plaintiff's use of proceeds, answering Paragraph 23.

37. Peacock Automotive only agreed to an assignment of Plaintiff's Lease Agreement upon Plaintiff's faithful performance of its promises in the APAs, in answer to Paragraph 24.

38. Peacock Automotive makes reference to the Lease Agreement, in answer to Paragraphs 25, 26, 27 and 28.

39. The allegations of Paragraph 29 are admitted.

40. Peacock Automotive admits that the APAs contain a confidentiality provision, which Peacock Automotive denies it violated and denies was violated by any member, manager, officer or agent or anyone else acting with authority on behalf of Peacock Automotive.

41. The allegations of Paragraphs 31, 32, 33, 34 and 35 are admitted.

42. Peacock Automotive admits so much of Paragraph 36 as alleges it sent a termination letter to Plaintiff on March 27, 2020 and that it stated several conditions precedent that Plaintiff had not met.

43. The allegations of Paragraph 37 are admitted.

44. Defendants admit that the South Carolina Attorney General issued an advisory Opinion on March 27, 2020 that was supplemented on March 29, 2020. The Opinions concluded that extraordinary powers delegated to the Governor may only be exercised by the Governor but

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that municipal ordinances are presumed to be constitutional and must be enforced unless set aside by a court of competent jurisdiction, all answering Paragraph 38.

45. The allegations of Paragraphs 39 and 40 are denied.

46. Plaintiff is subject to Columbia's Stay Home Stay Safe Ordinance as it pertains to essential businesses, and it also affects potential customers, answering Paragraph 41.

47. Peacock Automotive denies that the South Carolina Attorney General found that municipal stay at home orders were unenforceable absent a court order finding them unconstitutional, answering Paragraph 42.

48. The allegations of Paragraphs 43, 44, 45 and 46 are denied.

49. Defendants assert the breach of contract by Plaintiff, all unfulfilled conditions precedent to closing contained in the APAs that were jointly drafted by counsel for both parties, and all affirmative defenses contained herein, and deny that it has raised "new claims in an effort to avoid the commitments made to the Plaintiff, answering Paragraph 47.

50. Peacock Automotive denies that a statutory provision governing the sale of goods, S.C. Code §36-2-609 applies to the sale and purchase of automotive dealerships, despite Plaintiff's attorney's assertion in its letter dated April 3, 2020, answering Paragraph 48.

51. The allegations of Paragraph 49 are denied.

52. Peacock Automotive realleges its previous answers and defenses to the previous paragraphs of the Complaint where not inconsistent, answering Paragraph 50.

53. The allegations of Paragraphs 51, 52, 53 and 54 are denied.

54. Defendants admit so much of Paragraph 55 as alleges Warner Peacock, Mary Kaye Peacock, Ken Griffey, Jr., and Jay Brennan are "persons" as defined by S.C. Code § 56-15-10(n) but denies that these individuals, with the exception of Warner Peacock, are "dealers" or "motor

vehicle dealers" as defined by S.C. Code §56-15-10(h).

55. Answering Paragraph 56, Defendants admit Plaintiff is a citizen of South Carolina. Defendants are unable to admit or deny the remainder of Paragraph 56 as pled, due to lack of sufficient information and therefore deny same.

56. The allegations of Paragraph 57 are denied.

57. Peacock Automotive realleges its previous answers and defenses to the previous paragraphs of the Complaint where not inconsistent, answering Paragraph 58.

58. The allegations of Paragraph 59 are denied.

59. Peacock Automotive does not have sufficient information to admit or deny the allegations of Paragraph 60 due to lack of sufficient information and therefore deny same.

60. Peacock Automotive denies that Plaintiff has, in good faith and fair dealing, performed its obligations and conditions precedent to the APAs, answering Paragraph 61.

61. The allegations of Paragraphs 62, 63 and 64 are denied.

62. Peacock Automotive admits the APAs provide for specific performance, however Plaintiff has refused, in answer to Paragraph 65.

63. The allegations of Paragraph 66 are admitted and Defendants are therefore seeking to recover their costs and expenses including reasonable attorney's fees

64. The allegations of Paragraph 67 are denied.

65. Peacock Automotive realleges its previous answers and defenses to the previous paragraphs of the Complaint where not inconsistent, answering Paragraph 68.

66. The allegations of Paragraphs 69, 70 and 71 are admitted.

67. The allegations of Paragraphs 72, 73, 74, 75 and 76 are denied.

68. Peacock Automotive realleges its previous answers and defenses to the previous

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paragraphs of the Complaint where not inconsistent, answering Paragraph 77.

69. At all times relevant to the matters contained in the Complaint and this Answer and Counterclaim, Warner Peacock was acting in his capacity as Manager, CEO and President of Peacock Automotive, and not in his individual capacity, and his knowledge of the facts and circumstances concerning the APAs between Plaintiff and Peacock Automotive is knowledge obtained and used in that representative capacity, answering Paragraph 78.

70. The allegations of Paragraph 79 are denied.

71. Peacock Automotive and Warner Peacock deny the allegation of "interfering in the contractual relations between the Plaintiff and Peacock Automotive," answering Paragraph 80 and, further answering, the APAs were lawfully terminated.

72. The allegations of Paragraphs 81, 82 and 83 are denied.

73. Peacock Automotive realleges its previous answers and defenses to the previous paragraphs of the Complaint where not inconsistent, answering Paragraph 84.

74. The allegations of Paragraphs, 85, 86, 87, and 88 are denied.

FOR A SECOND DEFENSE AS TO ALL DEFENDANTS
(FAILURE TO STATE A CLAIM)

75. Peacock Automotive and W. Warner Peacock reassert and incorporate each and every allegation in its prior defenses, except as inconsistent herein.

76. Plaintiff has failed to state a claim upon which relief may be granted as to the First Cause of Action (Declaratory Judgment), which should be dismissed pursuant to Rule 12(b)(6), SCRCP, upon the grounds that the First Cause of Action (a) does not allege a justiciable controversy for the Court to decide, since it rests upon an alleged breach of contract that has already occurred, there being no future uncertainty for the Court to resolve, and (b) it is improper in the

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present action since advisory opinions are inappropriate and adequate remedies at law exist, Rule 12(f), SCRCP.

77. Plaintiff has failed to state a claim upon which relief may be granted as to the Second Cause of Action (Breach of Contract), which should be dismissed pursuant to Rule 12(b)(6), SCRCP, upon the grounds that: (a) Plaintiff fraudulently induced Peacock Automotive to sign the APAs and therefore, they are void, and (b) Plaintiff breached the APAs by not providing the financial records to which Peacock Automotive was entitled, not preserving the business and goodwill of Plaintiff's dealerships, and not operating the dealerships in the ordinary course of business.

78. Plaintiff has failed to state a claim upon which relief may be granted as to the Third Cause of Action (South Carolina Regulation of Manufacturers, Distributors and Dealers Act) upon the grounds that Plaintiff has failed to plead any facts showing that these Defendants engaged in any action that was arbitrary, in bad faith, or unconscionable.

79. Plaintiff has failed to state a claim upon which relief may be granted as to the Fifth Cause of Action (Veil Piercing), which should be dismissed pursuant to Rule 12(b)(6), SCRCP, upon the grounds that Plaintiff has failed to plead any facts showing that Peacock Automotive, LLC failed to observe corporate formalities.

FOR A THIRD DEFENSE
(UNCLEAN HANDS)

80. Peacock Automotive and W. Warner Peacock reassert and incorporate each and every allegation in its prior defenses, except as inconsistent herein.

81. To the extent that Plaintiff seeks equitable relief from Defendants, Plaintiff's own inequitable conduct constitutes unclean hands and therefore bars the granting of equitable relief to Plaintiff.

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FOR A FOURTH DEFENSE
(FRAUD IN THE INDUCEMENT)

82. Peacock Automotive and W. Warner Peacock reassert and incorporate each and every allegation in its prior defenses, except as inconsistent herein.

83. Plaintiff misrepresented its net profit and financial condition and that it was acting in the ordinary course of business.

84. Plaintiff's representation was material to each of the APAs.

85. Plaintiff knew its representations were false or acted in reckless disregard for the truth.

86. Plaintiff intended that Peacock Automotive act upon its representations and Peacock Automotive did act upon those representations.

87. Peacock Automotive had a right to rely upon Plaintiff's representations.

88. Peacock Automotive has been injured as consequent and proximate result of its reliance on Plaintiff's representations.

89. Plaintiff's claims are barred by its fraudulent inducement.

FOR A FIFTH DEFENSE
(FAILURE OF CONDITIONS PRECEDENT TO CLOSING)

90. Peacock Automotive and W. Warner Peacock reassert and incorporate each and every allegation in its prior defenses, except as inconsistent herein.

91. Plaintiff failed to meet all the conditions precedent in the APAs, including the following:

A. Plaintiff failed to conduct the Dealership's business in the ordinary course to preserve the goodwill value of the Dealerships which was the basis for the purchase price under the APAs.

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B. Plaintiff failed to use best efforts to operate and preserve the business and goodwill of the Dealerships which was the basis for the purchase price under the APAs.

C. Plaintiff failed to provide complete and accurate financial statements and data to Peacock Automotive.

D. Plaintiff warranted and represented at paragraph 13(1) of the APAs that all financial statements and data furnished by the Plaintiff to the Buyer "are true and accurate representations of the financial condition of the Plaintiff as of the date of such statements or reports." Furthermore, under paragraph 15(a) of the APAs, Plaintiff agreed that it would not take any action which would cause any representation or warranty made in the APAs to be incorrect in any material respect if such representation or warranty were made on any date from the Effective Date of the APAs through and including the Closing Date. Moreover, pursuant to paragraphs 16(e) and (f) of the APAs, all of the Plaintiff's representations and warranties "shall be true and correct in all material respects on the Closing Date." Plaintiff's false and misleading financial data presented to Peacock Automotive breached the representations and warranties under the APAs.

E. Plaintiff agreed to assume the risk of loss or damage to the dealership assets that may occur before closing.

92. Plaintiff's failure to meet all the conditions precedent relieves Peacock Automotive of any duty to purchase the Dealerships and acts as a complete bar to Plaintiff's claims.

FOR A SIXTH DEFENSE
(WAIVER)

93. Peacock Automotive and W. Warner Peacock reassert and incorporate each and every allegation in its prior defenses, except as inconsistent herein.

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94. Some or all of the claims asserted by Plaintiff are barred by the doctrine of waiver.

95. Plaintiff entered into the APAs that provided certain rights to Plaintiff, as set forth in the APAs, and known to Plaintiff, subject to all terms and conditions precedent contained therein.

96. Plaintiff has voluntarily and intentionally abandoned and relinquished its rights under the APAs.

97. Therefore, to the extent Plaintiff suffered damages, which is denied, they are barred.

FOR A SEVENTH DEFENSE
(EQUITABLE ESTOPPEL)

98. Peacock Automotive and W. Warner Peacock reassert and incorporate each and every allegation in its prior defenses, except as inconsistent herein.

99. Some or all of the claims asserted by Plaintiff are barred by the doctrine of equitable estoppel.

100. Plaintiff had knowledge of Peacock Automotive's right to rely on the representations in the disclosed financial statements of Plaintiff.

101. Plaintiff intended that Peacock Automotive rely on its acts or omissions concerning Plaintiff's financial statements and financial matters that were withheld from Peacock by Plaintiff's refusal to send the financial statements.

102. Peacock Automotive was ignorant of the true facts concerning the net profitability of the Dealerships and Peacock Automotive detrimentally relied on financial statements provided by Plaintiff which misrepresented the net profitability and therefor, the goodwill of the two dealerships Plaintiff hoped to sell.

FOR AN EIGHTH DEFENSE
(LIQUIDATED DAMAGES)

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103. Peacock Automotive and W. Warner Peacock reassert and incorporate each and every allegation in its prior defenses, except as inconsistent herein.

104. Plaintiff's claim and sole remedy, in the event it is entitled to recover damages, is limited to the recovery of liquidated damages in the amount of $100,000, which shall serve as liquidated damages for both APAs pursuant to paragraph 20(d) of the Chevrolet APA and paragraph 20 of the Hyundai APA.

FOR A NINTH DEFENSE
(FAILURE TO MITIGATE)

105. Peacock Automotive and W. Warner Peacock reassert and incorporate each and every allegation in its prior defenses, except as inconsistent herein.

106. To the extent Plaintiff suffered damages, which is denied, Plaintiff failed to mitigate its damages.

107. To the extent Plaintiff failed to mitigate its damages, they are barred.

FOR A TENTH DEFENSE
(PLAINTIFF'S MATERIAL BREACHES OF THE APAS)

108. Peacock Automotive and W. Warner Peacock reassert and incorporate each and every allegation in its prior defenses, except as inconsistent herein.

109. Plaintiff's claims are precluded and the APAs were lawfully terminated because of Plaintiff's material breaches of the APAs which caused the failure of the conditions precedent to closing set forth in Paragraph 91 above.

110. The APAs were lawfully terminated as a consequence of Plaintiff's material breaches of the APAs which acts as a complete bar to Plaintiff's claims.

FOR AN ELEVENTH DEFENSE
(PEACOCK AUTOMOTIVE'S LAWFUL TERMINATION OF THE APAS)

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111. Peacock Automotive and W. Warner Peacock reassert and incorporate each and every allegation in its prior defenses, except as inconsistent herein.

112. Plaintiff's claims are precluded and the APAs were lawfully terminated because of Plaintiff's material breaches of the APAs including:

A. Section 15(a) - Plaintiff failed to conduct the Dealerships' business in the ordinary course to preserve the goodwill value of the Dealerships which was the basis for the purchase price.

B. Section 15(b) – Plaintiff failed to use best efforts to operate and preserve the business and goodwill of the Dealerships which was the basis for the purchase price.

C. Section 15(c) – Plaintiff failed to provide the February Financial Statements and documents for the Dealerships to Peacock Automotive.

D. Plaintiff warranted and represented at paragraph 13(1) of the APAs that all financial statements and data furnished by Plaintiff to the Buyer "are true and accurate representations of the financial condition of Plaintiff as of the date of such statements or reports." Furthermore, under paragraph 15(a) of the APAs, Plaintiff agreed that it would not take any action which would cause any representation or warranty made in the APAs to be incorrect in any material respect if such representation or warranty were made on any date from the Effective Date of the APAs through and including the Closing Date. Moreover, pursuant to paragraphs 16(e) and (f) of the APAs, all of the Plaintiff's representations and warranties "shall be true and correct in all material respects on the Closing Date." Plaintiff's false

and misleading financial data presented to Peacock Automotive breached the representations and warranties under the APAs.

E. Plaintiff admitted by oral and written statements made to Peacock Automotive by its President, Edward M. Stivers, III, currently ongoing mismanagement at the Dealerships, shows Plaintiff's failure to operate the Dealerships in the ordinary course and Plaintiff's failure to use best efforts to maintain and preserve the business and goodwill value of the Dealerships, which was the basis for the purchase price.

113. The APAs were lawfully terminated as a consequence of Plaintiff's fraud in the inducement and material breaches of the APAs and acts as a complete bar to Plaintiff's claims.

FOR A TWELFTH DEFENSE
(NO LEGAL BASIS FOR CLAIMS AGAINST INDIVIDUAL NON-PARTIES TO THE APAs)

114. Peacock Automotive and W. Warner Peacock reassert and incorporate each and every allegation in its prior defenses, except as inconsistent herein.

115. The individuals named as Defendants are not parties to the APAs.

116. Plaintiff's claims against the individual Defendants are precluded because they are not parties to the APAs.

117. Plaintiff's claims against the individual Defendants should be dismissed with prejudice because they are not parties to the APAs.

FOR A THIRTEENTH DEFENSE
(PEACOCK AUTOMOTIVE AUTOMOTIVE'S ACTIONS WERE LAWFUL, REASONABLE AND UNDERTAKEN IN GOOD FAITH)

118. Peacock Automotive and W. Warner Peacock reassert and incorporate each and every allegation in its prior defenses, except as inconsistent herein.

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119. Plaintiff's claims are precluded and should be dismissed with prejudice because all of the actions of Peacock Automotive were lawful, reasonable and undertaken in good faith.

FOR A FOURTEENTH DEFENSE
(WARNER PEACOCK AUTOMOTIVE DID NOT VIOLATE THE CONFIDENTIALITY PROVISION OF THE APAs)

120. Peacock Automotive and W. Warner Peacock reassert and incorporate each and every allegation in its prior defenses, except as inconsistent herein.

121. W. Warner Peacock did not breach the confidentiality provision of the APAs, therefore, Plaintiff's claim for the breach of a confidentiality provision is precluded and should be dismissed with prejudice.

FOR A FIFTEENTH DEFENSE
(IMPOSSIBILITY OF PERFORMANCE)

122. Peacock Automotive and W. Warner Peacock reassert and incorporate each and every allegation in its prior defenses, except as inconsistent herein.

123. The APA's were lawfully terminated and Plaintiff's claims are precluded as a consequence of the unanticipated, unforeseen and historic COVID-19 Pandemic, the worldwide, statewide, and local states of emergency declared by local, state, federal and worldwide governments and response thereto and the principle of impossibility of performance.

FOR A SIXTEENTH DEFENSE
(IMPRACTICABILITY OF PERFORMANCE)

124. Peacock Automotive and W. Warner Peacock reassert and incorporate each and every allegation in its prior defenses, except as inconsistent herein.

125. The APAs were lawfully terminated and Plaintiff's claims are precluded as a consequence of the unanticipated, unforeseen and historic COVID-19 Pandemic, the worldwide, statewide, and local states of emergency declared by local, state, federal and worldwide

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governments and response thereto and the principle of impracticality of performance.

FOR A SEVENTEENTH DEFENSE
(FRUSTRATION OF PURPOSE AND FUNDAMENTAL BASIS FOR PARTIES' BARGAIN)

126. Peacock Automotive and W. Warner Peacock reassert and incorporate each and every allegation in its prior defenses, except as inconsistent herein.

127 The APAs were lawfully terminated and Plaintiff's claims are precluded as a consequence of the unanticipated, unforeseen and historic COVID-19 Pandemic, the worldwide government states of emergency and response thereto and the frustration of purpose and fundamental basis of the parties' bargain set forth in the APAs.

FOR AN EIGHTEENTH DEFENSE
(NO DAMAGES SUFFERED BY PLAINTIFF)

128. Peacock Automotive and W. Warner Peacock reassert and incorporate each and every allegation in its prior defenses, except as inconsistent herein.

129. Plaintiff's claims are precluded because it has suffered no damages as a consequence of the claims set forth in the Complaint.

FOR A NINETEENTH DEFENSE
(NO DAMAGES CAUSED BY DEFENDANTS)

130. Peacock Automotive and W. Warner Peacock reassert and incorporate each and every allegation in its prior defenses, except as inconsistent herein.

131. Plaintiff's claims are precluded because it has suffered no damages caused by any wrongful actions of the Defendants.

FOR A TWENTIETH DEFENSE
(NO RIGHT TO RECOVER SPECIAL,

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INDIRECT OR PUNITIVE DAMAGES)

132. Peacock Automotive and W. Warner Peacock reassert and incorporate each and every allegation in its prior defenses, except as inconsistent herein.

133. Plaintiff's claims to special, indirect or punitive damages are precluded by the express terms of paragraph 24(1)(3) of the APAs.

FOR A TWENTY-FIRST DEFENSE
(CONSTITUTIONAL DEFENSE)

134. Peacock Automotive and W. Warner Peacock reassert and incorporate each and every allegation in its prior defenses, except as inconsistent herein.

135. Any award of punitive damages against Defendants will violate rights guaranteed to it by the Constitution of the State of South Carolina for the following reasons:

A. Any award of punitive damages violates the prohibition against excessive fines under Article 1, Section 15 of the Constitution of South Carolina; and

B. Any award of punitive damages violates the guarantee of due process found in Article I, Section 3 of the Constitution of South Carolina because of a lack of objective guidelines on which a jury might base its award and further that such guidelines as exist are arbitrary and void for vagueness.

FOR A TWENTY-SECOND DEFENSE
(CONSTITUTIONAL DEFENSE)

136. Peacock Automotive and W. Warner Peacock reassert and incorporate each and every allegation in its prior defenses, except as inconsistent herein.

137. Any award of punitive damages against Defendants will violate its rights guaranteed to it under the Constitution of the United States for the following reasons:

A. Any award of punitive damages violates the prohibition of excessive fines found in the Eighth Amendment of the Constitution of the United States as applied to the states by way of the due process clause of the Fourteenth Amendment of the Constitution of the United States; and

B. Any award of punitive damages violates the guarantee of due process found in the Fourteenth Amendment to the Constitution of the United States because of the lack of objective guidelines in which a jury might base its award and further than such guidelines as do exist are arbitrary and void for vagueness.

FOR A TWENTY-THIRD DEFENSE
(RISK OF LOSS)

138. Peacock Automotive and W. Warner Peacock reassert and incorporate each and every allegation in its prior defenses, except as inconsistent herein.

139. Plaintiff contractually agreed to retain the risk of any loss or damage to the dealership assets through the closing date.

FOR A FIRST COUNTERCLAIM
(BREACH OF CONTRACT)

140. Peacock Automotive and W. Warner Peacock reassert and incorporate each and every allegation in its prior defenses, except as inconsistent herein.

141. Peacock Automotive and Plaintiff entered into two Asset Purchase Agreements on January 7, 2020.

142. Stivers agreed in Section 15(a) of the APAs:

> From the Effective Date of this Agreement to the Closing Date (the "Interim Period"), unless Buyer consents otherwise in writing, Seller will conduct the Dealership's business only in the ordinary course . . .

Section 15(b) similarly required:

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> During the Interim Period, Seller agrees to use its best efforts: to maintain and preserve the business and goodwill of Seller with respect to the Dealership; to maintain and preserve its present relationships with its vendors, suppliers, customers and other third parties; and to retain until Closing (subject to Sections 6(c) and 6(e) above) any employees as to whom Buyer has indicated an interest in hiring after Closing. The foregoing shall not be construed to authorize Seller to make any commitments on behalf of Buyer or otherwise to create any legal obligation of Buyer of any kind.

143. To ensure that Plaintiff was operating in the ordinary course and preserving its good will, it promised to provide access to its books and records (Section 15(c)) and that all data furnished to Peacock Automotive was a true and accurate representation of its financial condition (Section 10(h)).

144. Plaintiff breached the APAs by failing to conduct its business in the ordinary course, failing to preserve its business and goodwill, and failing to provide access to its books and records to Peacock Automotive.

145. Stivers and Peacock Automotive agreed that if the Chevrolet purchase did not close due to no fault of Peacock Automotive, the $100,000 escrow would be returned to Peacock Automotive.

146. Peacock Automotive has been injured as a result of Plaintiff's breach.

147. Peacock Automotive is informed and believes that it is entitled to a return of the escrow, an award of actual damages, and an award of costs and expenses including a reasonable award of attorney's fees, as allowed by both APAs.

FOR A SECOND COUNTERCLAIM
(BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT)

148. Peacock Automotive and W. Warner Peacock reassert and incorporate each and every allegation in its prior defenses, except as inconsistent herein.

149. Plaintiff breached the APAs by providing financial statements to Peacock

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Automotive, LLC that contained misleading financial results that falsely inflated the net profitability and goodwill value of Plaintiff's dealerships.

150. Plaintiff had fraudulent intent relating to the breaching of the contract when it repeatedly refused to provide additional financials, which would have shown that the Plaintiff's dealerships were not generating $2 million per year in net profit and were not being operated in the ordinary course of business.

151. Plaintiff engaged in fraudulent acts that accompanied a breach of contract by providing misleading financial statements and refusing to provide other financial statements which Peacock Automotive had a contractual right to receive.

FOR A THIRD COUNTERCLAIM
(FRAUD IN THE INDUCEMENT)

152. Peacock Automotive and W. Warner Peacock reassert and incorporate each and every allegation in its prior defenses, except as inconsistent herein.

153. Any potential purchase of a dealership is based on the representation of Seller as to the net profitability of the dealership.

154. Plaintiff represented the $2 million net profitability, financial condition and value of its dealerships' goodwill, and that it was acting in the ordinary course of business.

155. Plaintiff's representations were false and were material to the contract.

156. Plaintiff knew its representations were false or acted in reckless disregard for the truth.

157. Plaintiff intended that Peacock Automotive act upon its representations regarding its $2 million net profitability, goodwill value, financial condition and operations in the signing of the APAs, and Peacock Automotive did act upon those representations.

158. Peacock Automotive had a right to rely, and did rely, upon Plaintiff's

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representations, and was ignorant of their falsities.

159. Peacock Automotive has been injured as a consequent and proximate result of its reliance on Plaintiff's representations.

160. Peacock Automotive is entitled to actual and punitive damages.

FOR A FOURTH COUNTERCLAIM
(NEGLIGENT MISREPRESENTATION)

161. Peacock Automotive and W. Warner Peacock reassert and incorporate each and every allegation in its prior defenses, except as inconsistent herein.

162. Plaintiff represented the $2 million net profitability, financial condition and value of its dealerships' goodwill, and that it was acting in the ordinary course of business.

163. Plaintiff's representations were false and were material to the contract.

164. Plaintiff had a pecuniary interest in making the statement.

165. Plaintiff owed a duty of care to see that it communicated truthful information to Peacock Automotive.

166. Plaintiff breached its duty by failing to exercise due care.

167. Peacock Automotive justifiably relied on Stiver's representations.

168. Peacock Automotive has been injured as a consequent and proximate result of its reliance on Plaintiff's representations.

169. Peacock Automotive is entitled to actual and consequential damages.

PRAYER FOR RELIEF

WHEREFORE, Defendants W. Warner Peacock and Peacock Automotive, LLC pray the Court to:

i. Enter an Order declaring that Plaintiff shall have and recover nothing from these Defendants;

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ii. Enter an Order in favor of these Defendants in their counterclaims, for an award of both actual and punitive damages against Plaintiff, including the expenses of this action, including reasonable attorney's fees;

iii. Tax the costs of this action against Plaintiff; and

iv. Provide such other relief as may be just and proper.

June 5, 2020

Respectfully submitted,

s/Bradford N. Martin
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Laura W. H. Teer, Esq. (SC Bar No. 16698)
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ATTORNEYS FOR DEFENDANTS PEACOCK AUTOMOTIVE, LLC AND W. WARNER PEACOCK

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CASE NO. 2020-CP-40-01934
STIVERS BROTHERS AUTOMOTIVE, INC.,	)	
Plaintiff,	)	
v.	)	**REPLY**
W. WARNER PEACOCK, MARY KAYE PEACOCK, KEN GRIFFEY, JR., JAY BRENNAN, and PEACOCK AUTOMOTIVE, LLC,	)	
Defendants.	)	

The Plaintiff, not waiving but specifically reserving its rights pursuant to its motion to strike, replying to the Answer and Counterclaims of Defendants, W. Warner Peacock and Peacock Automotive, LLC, would respectfully show that:

AS TO THE FIRST THROUGH TWENTY THIRD DEFENSES

1. The Plaintiff reaffirms and reiterates all of the allegations contained in the complaint.

AS TO THE COUNTERCLAIMS

2. Each and every allegation not hereinafter admitted, qualified, or explained is denied and strict proof is demanded thereof.

3. As to the allegations contained in paragraph 140, the Plaintiff reasserts its previous responses thereto.

4. The allegations in paragraph 141 are admitted.

5. As to the allegations contained in paragraphs 142 and 143, the Plaintiff craves

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reference to the entire contracts for their exact terms and provisions and context. Any allegations contained in paragraphs 142 and 143 inconsistent herewith are denied.

6. The allegations in paragraph 144 are denied.

7. As to the allegations contained in paragraph 145, the Plaintiff craves reference to the entire contracts for their exact terms and provisions and context. Any allegations contained in paragraph 145 inconsistent herewith are denied.

8. The allegations contained in paragraphs 146 and 147 are denied.

9. As to the allegations contained in paragraph 148, the Plaintiff reasserts its previous responses thereto.

10. The allegations contained in paragraphs 149, 150, and 151 are denied.

11. As to the allegations contained in paragraph 152, the Plaintiff reasserts its previous responses thereto.

12. The allegations contained in paragraph 153 are denied.

13. As to the allegations contained in paragraph 154, the Plaintiff craves reference to the entire contacts for their exact terms and provisions and context. Any allegations contained in paragraph 154 inconsistent herewith are denied.

14. The allegations contained in paragraphs 155, 156, 157, 158, 159, and 160 are denied.

15. As to the allegations contained in paragraph 161, the Plaintiff reasserts its previous responses thereto.

16. As to the allegations contained in paragraph 162, the Plaintiff craves reference to the entire contracts for their exact terms and conditions and context. Any allegations contained in paragraph 162 inconsistent herewith are denied.

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17. The allegations contained in paragraph 163 are denied.

18. The allegations contained in paragraphs 164 and 165 are admitted.

19. The allegations contained in paragraph 166 are denied.

20. The allegations contained in paragraphs 167, 168, and 169 are denied.

WHEREFORE, having fully replied to the Answer and Counterclaims, the Plaintiff prays that same be dismissed with costs, that it be given judgment on its Complaint, and for such other and further relief as the Court may deem just and proper.

STUDEMEYER LAW FIRM, P.C.

By: s/J. Gregory Studemeyer
J. Gregory Studemeyer
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Attorney for the Plaintiff

Irmo, South Carolina

July 1, 2020

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CASE NO. 2020-CP-40-01934
STIVERS BROTHERS AUTOMOTIVE, INC.,	)	
Plaintiff,	)	
v.	)	
	)	**AMENDED COMPLAINT**
W. WARNER PEACOCK and PEACOCK AUTMOTIVE, LLC,	)	
Defendants.	)	

The Plaintiff above named, complaining of the Defendants herein, would respectfully show unto the Court:

INTRODUCTION

1. The distribution of motor vehicles in South Carolina is regulated to prevent frauds, impositions, and other abuses upon citizens of South Carolina by manufacturers, distributors, dealers and their representatives doing business in South Carolina.

2. The Plaintiff has lawfully engaged in the business of selling and servicing new Chevrolet and Hyundai motor vehicles and used motor vehicles in Richland County, South Carolina since August 4, 2017, and its affiliated dealerships maintained a presence and lawfully conducted business in Richland, Lexington, and Sumter Counties, South Carolina from 1989 until 2011.

3. The Plaintiff and its affiliates have owned and operated various dealerships including Ford, Lincoln, Mercury, Mazda, Chrysler, Dodge, Jeep, RAM, Mitsubishi, Subaru, and Suzuki in Missouri, Iowa, South Carolina, Georgia, and Alabama.

4. Peacock Automotive, LLC has engaged in the motor vehicle business in South

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Carolina under various names including NRAM Holdings, LLC, Coastal States Automotive Group, LLC, and New River Auto Mall, LLC since March 26, 2007.

5. Peacock Automotive, LLC, directly or through affiliates, operates Audi, Volkswagen, Subaru, Land Rover, Jaguar, Porsche, Genesis, Hyundai, Chrysler, Jeep, Dodge, RAM, FIAT, and Subaru motor vehicle dealerships in Jasper County, Jaguar and Land Rover dealerships in Lexington County, and Hyundai and Genesis dealerships in Richland County, South Carolina.

6. As more fully set forth herein, Peacock Automotive, LLC has engaged in unethical and unlawful conduct in Richland County, South Carolina and has caused the Plaintiff to suffer significant monetary damages.

7. The Plaintiff brings this action for declaratory relief, equitable relief including specific performance, and for damages as a result of the foregoing unlawful acts.

PARTIES

8. The Plaintiff is a domestic corporation, maintaining its principal place of business in the County of Richland, State of South Carolina.

9. Upon information and belief, Defendant, W. Warner Peacock, ("Warner Peacock") is a native of Florida.

10. Warner Peacock purports to be a resident of both Florida and South Carolina.

11. Warner Peacock has represented that he moved to Florida in November of 2019.

12. Warner Peacock was served at his home in Bluffton, South Carolina with copies of the summons and complaint by Deputy M. Tannuzi of the Beaufort County Sheriff's Office on April 28, 2020.

13. Defendant, Peacock Automotive, LLC ("Peacock Automotive"), is a limited

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liability company, organized and existing under the laws of the State of Florida, conducting business, directly or through affiliates, in the Counties of Jasper, Lexington, and Richland, State of South Carolina.

14. Peacock Automotive also conducts business in Georgia and Florida.

15. Peacock Automotive has admitted in the matter of Barone v. Jaguar Land Rover North America, LLC, Peacock Automotive, LLC d/b/a Land Rover Hilton Head, and Coastal States Automotive Group, LLC d/b/a Land Rover Hilton Head pending in Jasper County (Case No. 2020-CP-27-00017) that its principal place of business is in Jasper County, South Carolina, and is judicially estopped from suggesting otherwise in this matter.

16. Peacock Automotive's Chief Operating Officer, Jim Thayer, resides in and maintains an office in South Carolina.

17. The bulk of Peacock Automotive's activity takes place in South Carolina.

JURISDICTION AND VENUE

18. This Court has jurisdiction over the parties and the subject matter of this action pursuant to S.C. Code Ann. Sections 56-15-20, 36-2-802, and 36-2-803.

19. Venue is proper in Richland County pursuant to S.C. Code Ann. Section 15-7-30(F)(1) since the most substantial part of the act or omission giving rise to these causes of action occurred in Richland County. Venue is also proper under S.C. Code Ann. Section 56-15-140.

SUBSTANTIVE ALLEGATIONS

20. Beginning in the Spring of 2019, the Plaintiff and the Defendants began engaging in discussions about exchanging and/or acquiring one or more of the other's dealerships.

21. Specifically, recognizing that the Columbia market was not big enough to support

two Hyundai franchises, that the Plaintiff had been a successful Ford dealer, and that Peacock Automotive was underperforming with its Ford dealership in Florida, the Plaintiff and the Defendants discussed exchanging the Plaintiff's Chevrolet and Hyundai dealerships for the Defendants' Ford dealership in Florida.

22. Thereafter, the parties discussed the sale and/or acquisition of the other's Columbia area Hyundai dealerships.

23. In the Fall of 2019, when an opportunity for another Ford franchise presented itself to the Plaintiff in Alabama, the Plaintiff resumed discussions with the Defendants about the potential sale of its Columbia area dealerships.

24. The Plaintiff furnished the Defendants with detailed financial information about the operation of the dealerships.

25. Before any letter of intent or APA was signed, the Defendants' Chief Financial Officer visited the Plaintiff's Columbia area dealerships to inspect the assets and to engage in due diligence.

26. On January 7, 2020, the Plaintiff and Peacock Automotive entered into two separate Asset Purchase And Sale Agreements ("APAs"), one for the assets of the Plaintiff's Chevrolet dealership located at 111 Newland Road, Columbia, South Carolina 29229, and the other for the assets of the Plaintiff's Hyundai dealership located at 101 Newland Road, Columbia, South Carolina 29229.

27. Both parties were sophisticated business entities, capable of assessing their respective risks with the transactions.

28. The Plaintiff entered into the APAs recognizing that the assets could increase in value and that the prospect of selling them could become less favorable.

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29. Peacock Automotive entered into the APAs recognizing that the assets could decrease in value or that the prospect of acquiring them could become less favorable.

30. Each APA provided for the payment by Peacock Automotive to the Plaintiff of the sum of THREE MILLION FIVE HUNDRED THOUSAND DOLLARS ($3,500,000) for a total of SEVEN MILLION DOLLARS ($7,000,000), in addition to the purchase of certain new motor vehicles, certain service loaners, all fixed assets, certain parts and accessories, all unopened oil and grease drums and bulk oil and fluid, and certain work in process.

31. Representatives of the Plaintiff and Peacock Automotive had specific discussions concerning the Plaintiff's intention to acquire another dealership with the proceeds of the transaction.

32. Each APA required Peacock Automotive to enter into an assignment of Lease Agreement with the owners of the Premises.

33. When the APAs were signed, term of the Lease Agreement extended through June 24, 2024.

34. When the APAs were signed, the Lease Agreement allowed the Plaintiff to terminate on December 24, 2021, by providing written notice on or before December 24, 2020.

35. The annual Base Rent payable under the Lease Agreement was One Million Two Hundred Fifty-Three Thousand Five Hundred Twenty and 84/100 Dollars ($1,253,520.84), payable in monthly installments equal to One Hundred Four Thousand Four Hundred Sixty and 07/100 Dollars ($104,460.07), in advance on or before the first day of each Lease Month during the Term.

36. In addition to the annual Base Rent payable under the lease, property taxes of One Hundred Seventy Three Thousand Eight Hundred Sixty Five and 25/100 Dollars ($173,865.25)

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and insurance premiums of One Hundred Seventeen Thousand Nine Hundred Fifty One and 69/100 Dollars ($117,951.69) were due and payable annually.

37. Each APA required Peacock Automotive to submit applications to the manufacturer within 20 days of receiving applications from the manufacturers and to use its best efforts in good faith to obtain required approvals at the earliest date practicable, but no later than one hundred and five (105) days after the effective date, January 7, 2020.

38. Each APA required Peacock Automotive to keep the existence of the APAs confidential.

39. The Defendants failed to keep the existence of the APAs confidential.

40. Neither APA contained a "force majeure" clause.

41. On March 13, 2020, in response to the Covid-19 pandemic, the President of the United States declared that an emergency existed nationwide under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

42. On March 26, 2020, Ordinance No.: 2020-034, "An Emergency Order Declaring a Stay Home Stay Safe for the City of Columbia, South Carolina" ("the Ordinance") was issued by Mayor Stephen K. Benjamin and Columbia City Council.

43. The Ordinance provided that individuals "shall stay in their homes and not travel through or congregate in the streets, sidewalks, waterways and/or public spaces in the City of Columbia, including establishments that hold a City of Columbia business licenses [sic] except for the purposes of working at or conducting business with the attached list of businesses (hereinafter "Essential Service" or "Essential Services").

44. Exhibit A to the Ordinance defines twelve types of "essential services" including, *inter alia*, vehicle sales and automotive repair.

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45. Notwithstanding the plain language of the Ordinance and the exceptions thereto, on March 27, 2020, Warner Peacock emailed a purported notice of termination of the APAs to the Plaintiff, a copy of which is attached hereto and incorporated herein by reference as Exhibit A, suggesting that the following conditions precedent to closing had not been met:

a. "We" do not believe the current conditions existing in the Columbia, SC area permit the Seller to comply with these requirements, as the Dealership's [sic] business cannot now or for the foreseeable future operate in the ordinary course;

b. "We" also believe Columbia's issuance of a stay in place order is an order of the type that qualifies pursuant to Section 16(h) to materially adversely affecting [sic] the Subject Assets; and

c. "we" have requested the February 2020 financial records and Seller has failed to provide such records.

46. In his purported notice of termination, Warner Peacock also requested that "Shutts Bowen LLP, in its capacity as escrow agent, return the $100,000 deposit which was made in connection with this proposed transaction".

47. On the same day, the South Carolina Attorney General issued an Opinion that local government cannot exercise the emergency powers delegated to the Governor by the General Assembly and that unauthorized exercise of such emergency powers could subject political subdivisions to liability at the behest of a private citizen with requisite legal standing.

48. As set forth herein, all of Warner Peacock's asserted reasons for termination were plainly pretextual.

49. At all times, notwithstanding the Defendants' "belief", the Plaintiff has continued to operate in the ordinary course of business.

50. By its terms, the Ordinance does not apply to the Plaintiff's business.

51. Even if the Plaintiff was not excepted from the provisions of the Ordinance, the

South Carolina Attorney General determined that the action taken by the Mayor and Council was not an authorized exercise of emergency powers delegated to the Governor by the General Assembly.

52. The Defendants had electronic access to the Plaintiff's financial records from January 15, 2020, beyond the date of the purported termination.

53. The real reason for the Defendants' purported termination is the ongoing Covid-19 pandemic, notwithstanding the lack of a "force majeure" clause in the APAs.

54. The Defendants wish to shift the burden they knowingly and voluntarily undertook in the APAs to the Plaintiff because closing on the transactions now appears less favorable to them.

55. The Defendants failed and refused to promptly submit to the manufacturers all forms, applications, and other documents which the manufacturers required to consider approval of the transactions.

56. The Plaintiffs will further show that Warner Peacock raised subsequent claims in an effort to avoid the commitments made to the Plaintiff, including an inability to arrange for inventory financing and an inability to speak with the Chevrolet Zone Manager, neither of which are included as conditions precedent in the nearly 30 pages of each APA initiated by counsel for the Defendants.

57. On April 3, 2020, a demand for adequate assurance of performance was made to the Defendants pursuant to S.C. Code Ann. Section 36-2-609.

58. The Defendants failed and refused and continue to fail and refuse to comply with their implied covenant of good faith and fair dealing and to provide adequate assurance of performance as requested.

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FOR A FIRST CAUSE OF ACTION
(declaratory judgment)

59. Each and every previous allegation is realleged herein in the same manner and to the same extent as if repeated.

60. This cause of action is brought pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. Section 15-53-10, et seq.

61. The Plaintiff is a person interested under a written contract or other writing constituting a contract whose rights, status or other legal relations are affected by a statute and/or contract and seek to have determined questions of construction or validity arising under the statute and/or contract and obtain a declaration of rights, status or other legal relations thereunder.

62. In addition thereto, the issues herein are of such public importance as to require their resolution for future guidance.

63. As set forth herein, a real or actual controversy exists between the Plaintiff and the Defendants.

64. Warner Peacock is a "person" as defined by S.C. Code Ann. Section 56-15-10(n) and both of the Defendants are "dealers" or "motor vehicle dealers" as defined by S.C. Code Ann. Section 56-15-10(h).

65. The Plaintiff is a citizen of South Carolina entitled to protection from frauds, impositions, and other abuses by dealers or motor vehicle dealers as contemplated by 1972 S.C. Acts 2419, 1972 Act No. 1237 hereafter "Act No. 1237").

66. Based upon the foregoing, the Plaintiff is informed and believes that it is entitled to a declaration that the APAs between the Plaintiff and the Defendants remain valid and

enforceable contracts, notwithstanding the Defendants' purported termination for pretextual reasons.

FOR A SECOND CAUSE OF ACTION
(breach of contract)

67. To the extent not inconsistent herewith, each and every previous allegation is realleged herein in the same manner and to the same extent as if repeated.

68. The Plaintiff and the Defendants entered into valid and binding contracts.

69. The Plaintiff elected to forgo an opportunity to purchase real estate in Richland County to relocate the assets and to exercise the right to early termination of the Lease Agreement in reliance upon the Defendants' obligations under the APAs.

70. The APAs were partly carried into execution by the Plaintiff with the approbation of the Defendants.

71. The Plaintiff performed its obligations under the APAs.

72. The Defendants have breached the contracts, placing the Plaintiff in the untenable position of having to exercise its right to early termination of the Lease Agreement and selling the assets at a "fire sale" without a place of business, immediately acquiring real estate and trying to construct a facility on or before December 24, 2021, or continuing to pay rent, property taxes, and insurance while continuing to market the assets in the current environment, in the wake of the Defendants' breach of the confidentiality provisions.

73. The Plaintiff has been damaged by the Defendants' breach and will continue to suffer damage in the future caused by the breach.

74. Both APAs provide for specific performance together with any other remedies at law or equity.

75. Both APAs provide that if any action shall be brought by any party to recover any

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sums hereunder, or for or on account of any breach of, or to enforce or interpret any of the covenants, terms or conditions of the APAs, then the prevailing party shall be entitled to recover costs and expenses incurred in such action, including reasonable attorney's fees.

76. Based upon the foregoing, the Plaintiff is informed and believes that it is entitled to an order requiring specific performance of each APA, an award of actual damages if specific performance can not be had, and an award of costs and expenses including a reasonable award of attorney's fees.

FOR A THIRD CAUSE OF ACTION
(breach of contract accompanied by a fraudulent act)

77. To the extent not inconsistent herewith, each and every previous allegation is realleged herein in the same manner and to the same extent as if repeated.

78. The Defendants had fraudulent intent related to the breaching of the contracts.

79. The Defendants secured the Plaintiff's financial information by leading the Plaintiff to believe that they wished to purchase the Plaintiff's assets.

80. The Defendants failed and refused to provide both General Motors and Hyundai the information required to secure franchisor approval and attempted to fabricate other pretextual justifications to avoid performance of their obligations under the APAs.

81. Based upon the foregoing, the Plaintiff is informed and believes that it is entitled to an award of both actual and punitive damages.

FOR A FOURTH CAUSE OF ACTION
(violation of the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act "RMDDA")

82. To the extent not inconsistent herewith, each and every previous allegation is realleged in the same manner and to the same extent as if repeated.

83. Among other things, Act No. 1237, now codified in Chapter 15 of Title 56 of the

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South Carolina Code as Regulation of Manufacturers, Distributors, and Dealers ("RMDDA"), includes certain definitions and declares certain conduct to be unlawful.

84. Specifically, S.C. Code Ann. Section 56-15-30 declares unfair methods of competition and unfair or deceptive acts or practices as defined by Section 56-15-40 to be unlawful.

85. More specifically, S.C. Code Ann. 56-15-40(1) deems it a violation of Section 56-15-30 for, among others, a dealer to engage in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to any of the parties or to the public.

86. As set forth herein, the Defendants have engaged in unfair methods of competition and unfair and deceptive acts or practices declared unlawful by S.C. Code Ann. 56-15-30.

87. Moreover, the Defendants have engaged in malicious action which is arbitrary, in bad faith, or unconscionable and which has caused and continues to cause damage to the Plaintiff.

88. The Defendants acts were unreasonable, capricious or nonrational, not according to any legitimate reason or judgment and dependent upon will alone.

89. The Defendants engaged in conduct designed to deceive or mislead prompted by an interested or sinister motive, including but not limited to, using the current environment and breaching the APAs to renegotiate the terms.

90. Based upon the foregoing, the Plaintiff is informed and believes that it is entitled to judgment for double the actual damages by it sustained, the cost of suit, including a reasonable attorney's fee, and an award of punitive damages, not to exceed three times the actual damages.

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FOR A FIFTH CAUSE OF ACTION

91. To the extent not inconsistent herewith, each and every previous allegation is realleged herein in the same manner and to the same extent as if repeated.

92. At all times herein mentioned, Warner Peacock had intimate knowledge of all of the facts and circumstances concerning the APAs between the Plaintiff and Peacock Automotive.

93. Warner Peacock intentionally procured the breach of the APAs between the Plaintiff and Peacock Automotive.

94. Warner Peacock has no justification for interfering in the contractual relations between the Plaintiff and Peacock Automotive.

95. As a result of Warner Peacock's interference, the Plaintiff has suffered and will continue to suffer actual and consequential damages.

96. Warner Peacock wantonly, willfully, and maliciously interfered with the Plaintiff's contractual relations with Peacock Automotive.

97. Based upon the foregoing, the Plaintiff is informed and believes that it is entitled to judgment against Warner Peacock for both actual and punitive damages.

FOR A SIXTH CAUSE OF ACTION
(veil piercing)

98. To the extent not inconsistent herewith, each and every previous allegation is realleged herein in the same manner and to the same extent as if repeated.

99. Warner Peacock has attempted to use Peacock Automotive to protect fraud, justify wrong, or defeat public policy.

100. The interests of Peacock Automotive and Warner Peacock are identical, and one is the alter ego of the other.

101. This Court should inquire into the observation of formalities by Peacock

Automotive including but not limited to whether it was adequately capitalized, paid dividends, was or is insolvent, siphoning of funds by the dominant shareholders or members, whether other officers or directors performed their official functions, whether it maintained appropriate records, and whether it was merely a façade for the operations of the dominant shareholders or members.

102. The Plaintiff will show that insulating Warner Peacock and Peacock Automotive's other members from liability for their wrongdoing while operating through their Florida limited liability company, conducting business in South Carolina, would result in injustice and fundamental unfairness.

WHEREFORE, the Plaintiff prays for declaratory relief, equitable relief in the form of specific performance, for an award of both actual and punitive damages, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

STUDEMEYER LAW FIRM, P.C.

By: s/J. Gregory Studemeyer
J. Gregory Studemeyer
SC Bar #5416
7478 Carlisle Street
Post Office Box 1014
Irmo, South Carolina 29063
803-393-4399

Attorney for the Plaintiff

Irmo, South Carolina
July 2, 2020

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PEACOCK AUTOMOTIVE, LLC
265 Drivers way
Hardeeville, SC 29927

March 27, 2020

Stivers Brothers Automotive, Inc.
Attn: Edward M. Stivers, III
4000 Eastern Boulevard
Montgomery, Alabama 36116

Delivered By:
Electronic mail

Re: Proposed Sale of certain assets of STIVERS BROTHERS AUTOMOTIVE, INC, a South Carolina corporation.

Dear Mr. Stivers:

Reference is made to that certain Asset Purchase Agreement (the "Hyundai APA") dated January 7, 2020, by and between Stivers Brothers Automotive, Inc., a South Carolina corporation ("Seller"), and Peacock Automotive, LLC, a Florida limited liability company ("Buyer") for the sale of certain assets used in Seller's Hyundai Genesis dealership, and that certain Asset Purchase Agreement (the "Chevrolet APA" and, collectively with the Hyundai APA, the "Agreements") dated January 7, 2020, by and between Seller and Buyer for the sale of certain assets used in Seller's Chevrolet Dealership. All capitalized terms used herein and not otherwise defined, have the meanings ascribed thereto in the Agreements.

Section 15 of the Agreements requires Seller to conduct the Dealership's business in the ordinary course, as well as use best efforts to operate and preserve the business and goodwill of the Seller. We do not believe the current conditions existing in the Columbia, SC area permit the Seller to comply with these requirements, as the Dealership's business cannot now or for the foreseeable future operate in the ordinary course. We also believe Columbia's issuance of a stay in place order to be an order of the type that qualifies pursuant to Section 16(h) to materially adversely affecting the Subject Assets. Further, we have requested the February 2020 financial records and Seller has failed to provide such records. Due to the failure of these conditions precedent to Closing, notice is hereby given of the termination of the Hyundai APA and the Chevrolet APA. By copy of this letter, I am requesting Shutts Bowen LLP, in its capacity as escrow agent, to return the $100,000.00 deposit which was made in connection with this proposed transaction, as provided in Section 20(c) of the Chevrolet APA.

Very truly yours,

PEACOCK AUTOMOTIVE, LLC, a
Florida limited liability company

By:_____
W. Warner Peacock, President

cc: McBride Law LLC
Attn: Richard L. McBride Jr.
184 Taliaferro Trail, Suite B
Montgomery, Alabama 36117
rick@mcbridelawllc.com

Exhibit A

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FIFTH JUDICIAL CIRCUIT**
COUNTY OF RICHLAND	)	
	)	C/A NO. 2020-CP-40-01934
STIVERS BROTHERS AUTOMOTIVE, INC.,	)	
	)	**ANSWER AND COUNTERCLAIMS OF DEFENDANTS PEACOCK AUTOMOTIVE, LLC AND W. WARNER PEACOCK TO PLAINTIFF'S AMENDED COMPLAINT**
Plaintiff,	)	
v.	)	
	)	
W. WARNER PEACOCK and PEACOCK AUTOMOTIVE, LLC,	)	
	)	
Defendants.	)	
_____	)	
	)	

Defendants Peacock Automotive, LLC (hereafter "Peacock Automotive"), and W. Warner Peacock, answering and counterclaiming to the Plaintiff's Amended Complaint, would respectfully show the Court as follows:

INTRODUCTION AND UNDERLYING FACTS

1. Peacock Automotive has built a strong reputation by providing high quality vehicle sales and service to the consumers in the state of South Carolina.

2. In its effort to provide better service in the Columbia, South Carolina area, Peacock Automotive explored the potential purchase of two dealerships from Plaintiff, one a Chevrolet dealership and the other a Hyundai/Genesis dealership. Critical to any potential purchase is the honest and fair disclosure by the selling dealership of the financial condition and net profit of the businesses and the continued running of the businesses with best efforts and in good faith until closing without any loss in goodwill caused by seller or an unexpected intervening event.

3. Plaintiff assured Defendant Peacock Automotive through several representations, that it was operating two highly successful dealerships (Chevrolet and Hyundai/Genesis) representing approximately $2 million dollars of net profits each year.

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4. The purchase price of any dealership in the automotive industry crucially relies upon the honesty and integrity of the seller in representing the true value of its dealerships and presenting honest and accurate financial information that does not misrepresent their net profits and financial health. Trusting the representations made by Plaintiff, Peacock Automotive signed two contingency contracts (the "Asset Purchase Agreements") on January 7, 2020 for the potential purchase of the Chevrolet and Hyundai/Genesis dealerships.

5. Critical to the closing of such important financial transactions are the protection, in good faith, of the selling dealerships' net profitability and goodwill, which requires the selling party to operate its business during the interim period in a manner that protects the most valuable assets being purchased.

6. The importance of Plaintiff's conducting the businesses in a way that protects Peacock Automotive was so important that the parties agreed specifically in the Asset Purchase Agreements (the "APAs") that Plaintiff would continue to operate these businesses in the ordinary course and promise to maintain and preserve the business and goodwill of the dealerships (Section 15(a) and 15 (b) of the APAs). Plaintiff further promised in writing that it would bear the risk of loss or damage to any of the dealerships' Subject Assets until closing, including any loss occasioned by an unexpected intervening event (Section 24(q)).

7. While Peacock Automotive has every right to rely upon the honesty and integrity of Plaintiff and its required duty to perform the APAs in good faith and fair dealing, the APAs themselves provided further protection in that Plaintiff promised to provide full access to its books and records and a true and accurate representation of its net profit and financial condition (Section 15(c) and Section 16(f) of the APAs).

8. Plaintiff has not kept its word regarding its financial position, net profitability, goodwill value, ongoing management and operation of the dealerships in the ordinary course, and

its best efforts to maintain the goodwill value of the dealerships prior to closing.

9. Plaintiff continued its disinformation campaign by failing to provide the financial records for November and December prior to Peacock Automotive's signing of the APAs.

10. Plaintiff never provided the November financial records and did not provide December financial records until February, and January financial records only came at the end of the month of February. Peacock Automotive's review of which indicated that Plaintiff was not operating in the ordinary course or preserving the net profitability and represented goodwill of the dealerships.

11. Peacock Automotive requested the February financials numerous times which Plaintiff promised to do so, however it never honored its word prior to the termination of the APAs. Peacock Automotive believes that these February financials would show substantial losses and prove that Plaintiff was operating outside the ordinary course and was failing to preserve the net profitability and goodwill of the businesses. Peacock Automotive further believes that the February financials will also prove that the Plaintiff's representations regarding the net profitability of its dealerships were false.

12. By March, the world had changed since the signing of the APAs in early January. The Coronavirus (COVID-19) pandemic had infected over a million people, killing thousands, and upending ordinary life. Slowing the spread of COVID-19 and minimizing human suffering was of utmost importance. As a result, state-imposed "shelter-in-place" laws and mandated closure of non-essential retail businesses became the new normal. This obviously impacted the average consumer, making even essential businesses unable to operate at expected levels. Such a devastating and unanticipated circumstance caused substantial damage to Plaintiff's business assets, a risk of loss that Plaintiff promised to bear (Section 24(q)).

13. When Plaintiff continued to break its word, Peacock Automotive had no alternative

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but to terminate the APAs on March 27, 2020.

14. Plaintiff, instead of acknowledging its responsibilities, has decided to sue, including several individuals personally who were not even parties to the APAs.[1] In response, Peacock Automotive seeks justice in placing the responsibility where it belongs: with Plaintiff.

FOR A FIRST DEFENSE TO ALL CAUSES OF ACTION
(AS TO ALL DEFENDANTS)

15. All allegations not expressly admitted are denied.

16. Defendants admit that the motor vehicle business is not only subject to legislative directives but also that each contract in South Carolina implies the duty of good faith and fair dealing, in answer to Paragraph 1.

17. Defendants admit that Plaintiff operates dealerships in Richland County, in answer to Paragraph 2.

18. Defendants do not have sufficient information to admit or deny the allegations of Paragraph 3, and therefore denies them.

19. Peacock Automotive admits that it has conducted significant business with the South Carolina public for many years, under various business names in answer to Paragraph 4.

20. Peacock Automotive admits that it successfully has operated several car dealerships in answer to Paragraph 5.

21. The allegations of Paragraph 6 are denied.

22. Paragraph 7 is a summary of Plaintiff's causes of action and needs no answer.

PARTIES

23. The allegations of Paragraph 8 are admitted upon information and belief.

24. The allegations of Paragraph 9 are admitted.

[1] Plaintiff has now unilaterally dismissed Defendants Ken Griffey, Jr., Jay Brennan and Mary Kaye Peacock.

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25. Warner Peacock admits he owns a residence in both South Carolina and Florida, in answer to Paragraph 10.

26. The allegations of Paragraphs 11, 12, 13, and 14 are admitted.

27. The allegations of Paragraph 15 are irrelevant and call for legal conclusions.

28. The allegations of Paragraphs 16 and 17 are admitted.

JURISDICTION AND VENUE

29. Defendants admit the allegations of Paragraphs 18 and 19.

SUBSTANTIVE ALLEGATIONS

30. Defendants admit negotiations began in the spring of 2019 for the purchase of Plaintiff's Columbia, South Carolina dealerships, in answer to Paragraph 20.

31. Defendants deny the allegations of Paragraphs 21 and 22.

32. Defendants admit negotiations took place in the fall of 2019, in answer to Paragraph 23.

33. Defendants admit that some, but not the most important, financial data was furnished, in answer to Paragraph 24.

34. Defendants deny the allegations of Paragraph 25.

35. Peacock Automotive signed the APAs for the dealerships referred to in Paragraph 26 in reliance upon Plaintiff keeping its oral and written word, in answer to Paragraphs 26 and 27.

36. Peacock Automotive entered into the APAs upon Plaintiff's oral and written assurances that it would operate the dealerships in the ordinary course and maintain and preserve the business and goodwill, and bear any risk of loss or damage to its assets, which Plaintiff has failed to do, all in answer to Paragraphs 28 and 29.

37. Peacock Automotive admits the amount of the Purchase Price in the APAs, which was based on the honest and faithful representations and performance of the APAs by Plaintiff, in

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answer to Paragraph 30.

38. Defendants admit only that Edward Stivers, a representative of Plaintiff, mentioned in passing Plaintiff's possible purchase of another dealership, not specifying whether such had occurred already or was to occur, and Defendants deny engaging in any specific discussions concerning Plaintiff's use of proceeds, answering Paragraph 31.

39. Peacock Automotive only agreed to an assignment of Plaintiff's Lease Agreement upon Plaintiff's faithful performance of its promises in the APAs, in answer to Paragraph 32.

40. Defendants make reference to the Lease Agreement, in answer to Paragraphs 33, 34, 35, 36 and 37.

41. The allegations of Paragraph 38 are admitted.

42. Defendants admit that the APAs contain a confidentiality provision, which Defendants deny they violated and deny it was violated, in answer to Paragraph 39.

43. The allegations of Paragraphs 40, 41, 42, 43 and 44 are admitted.

44. Defendants admit so much of Paragraph 45 as alleges it sent a termination letter to Plaintiff on March 27, 2020 and that it stated several conditions precedent that Plaintiff had not met.

45. The allegations of Paragraph 46 are admitted.

46. Defendants admit that the South Carolina Attorney General issued an advisory Opinion on March 27, 2020 that was supplemented on March 29, 2020. The Opinions concluded that extraordinary powers delegated to the Governor may only be exercised by the Governor but that municipal ordinances are presumed to be constitutional and must be enforced unless set aside by a court of competent jurisdiction, all answering Paragraph 47.

47. The allegations of Paragraphs 48 and 49 are denied.

48. Plaintiff is subject to Columbia's Stay Home Stay Safe Ordinance as it pertains to

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essential businesses, and it also affects potential customers, in answer to Paragraph 50.

49. Defendants deny that the South Carolina Attorney General found that municipal stay at home orders were unenforceable absent a court order finding them unconstitutional, in answer to Paragraph 51.

50. The allegations of Paragraphs 51, 53, 54 and 55 are denied.

51. Defendants assert the breach of contract by Plaintiff, all unfulfilled conditions precedent to closing contained in the APAs that were jointly drafted by counsel for both parties, and all affirmative defenses contained herein, and deny that it has raised "new claims in an effort to avoid the commitments made to the Plaintiff," answering Paragraph 56.

52. Defendants deny that a statutory provision governing the sale of goods, S.C. Code §36-2-609 applies to the sale and purchase of automotive dealerships, despite Plaintiff's attorney's assertion in its letter dated April 3, 2020, in answer to Paragraph 57.

53. The allegations of Paragraph 58 are denied.

FIRST CAUSE OF ACTION
(DECLARATORY JUDGMENT)

54. Defendants reallege its previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent, in answer to Paragraph 59.

55. Defendants deny that this matter is appropriate for Declaratory Judgment in answer to Paragraph 60.

56. The allegations of Paragraphs 61, 62 and 63 are denied.

57. Defendants admit the allegations of Paragraph 64.

58. Answering Paragraph 65, Defendants admit Plaintiff is a citizen of South Carolina. Defendants are unable to admit or deny the remainder of Paragraph 65 as pled, due to lack of sufficient information and therefore deny same.

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59. The allegations of Paragraph 66 are denied.

SECOND CAUSE OF ACTION
(BREACH OF CONTRACT)

60. Defendants reallege its previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent, in answer to Paragraph 67.

61. The allegations of Paragraph 68 are denied.

62. Defendants do not have sufficient information to admit or deny the allegations of Paragraph 69 due to lack of sufficient information and therefore deny same.

63. Defendants deny that Plaintiff has, in good faith and fair dealing, performed its obligations and conditions precedent to the APAs, in answer to Paragraph 70.

64. The allegations of Paragraphs 71, 72, and 73 are denied.

65. Defendants admit the APAs provide for specific performance, however Plaintiff has refused, in answer to Paragraph 74.

66. The allegations of Paragraph 75 are admitted and Defendants are therefore seeking to recover their costs and expenses including reasonable attorney's fees

67. The allegations of Paragraph 76 are denied.

THIRD CAUSE OF ACTION
(BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT)

68. Defendants reallege their previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent, answering Paragraph 77.

69. The allegations of Paragraphs 78, 79, 81, 81 are denied.

FOR A FOURTH CAUSE OF ACTION
(VIOLATION OF SOUTH CAROLINA REGULATION OF MANUFACTURERS, DISTRIBUTORS, AND DEALERS' ACT "RMDDA")

70. Defendants reallege their previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent, answering Paragraph 82.

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71. Defendants admit the allegations of Paragraphs 83, 84 and 85.

72. The allegations of Paragraphs 86, 87, 88, 89 and 90 are denied.

FIFTH CAUSE OF ACTION

73. Defendants reallege their previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent, in answer to Paragraph 91.

74. At all times relevant to the matters contained in the Amended Complaint and this Answer and Counterclaims, Warner Peacock was acting in his capacity as Manager, CEO and President of Peacock Automotive, and not in his individual capacity, and his knowledge of the facts and circumstances concerning the APAs between Plaintiff and Peacock Automotive is knowledge obtained and used in that representative capacity, in answer to Paragraph 92.

75. The allegations of Paragraph 93 are denied.

76. Peacock Automotive and Warner Peacock deny the allegation of "interfering in the contractual relations between the Plaintiff and Peacock Automotive," answering Paragraph 94 and, further answering, the APAs were lawfully terminated.

77. The allegations of Paragraphs 95, 96, and 97 are denied.

FOR A SIXTH CAUSE OF ACTION
(VEIL PIERCING)

78. Defendants reallege their previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent, answering Paragraph 98.

79. The allegations of Paragraphs, 99, 100, 101, and 102 are denied.

FOR A SECOND DEFENSE AS TO PLAINTIFF'S FIRST, SECOND THIRD, FOURTH, AND SIXTH CAUSES OF ACTION
(FAILURE TO STATE CLAIMS)

80. Defendants reallege their previous answers and defenses to the previous Paragraphs of the Amended Complaint where not inconsistent.

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81. Plaintiff has failed to state a claim upon which relief may be granted as to the First Cause of Action (Declaratory Judgment), which should be dismissed pursuant to Rule 12(b)(6), SCRCP, upon the grounds that the First Cause of Action (a) does not allege a justiciable controversy for the Court to decide, since it rests upon an alleged breach of contract that has already occurred, there being no future uncertainty for the Court to resolve, and (b) it is improper in the present action since advisory opinions are inappropriate and adequate remedies at law exist, Rule 12(f), SCRCP.

82. Plaintiff has failed to state a claim upon which relief may be granted as to the Second Cause of Action (Breach of Contract), which should be dismissed pursuant to Rule 12(b)(6), SCRCP, upon the grounds that: (a) Plaintiff fraudulently induced Peacock Automotive to sign the APAs and therefore, they are void, and (b) Plaintiff breached the APAs by not providing the financial records to which Peacock Automotive was entitled, not preserving the business and goodwill of Plaintiff's dealerships, and not operating the dealerships in the ordinary course of business.

83. Plaintiff has failed to state a claim upon which relief may be granted as to the Third Cause of Action (Breach of Contract Accompanied by a Fraudulent Act), which should be dismissed pursuant to 12(b)(6), SCRCP, upon the grounds that Plaintiff has failed to plead a separate fraudulent act accompanied by the alleged breach.

84. Plaintiff has failed to state a claim upon which relief may be granted as to the Fourth Cause of Action (South Carolina Regulation of Manufacturers, Distributors and Dealers Act) upon the grounds that Plaintiff has failed to plead any facts showing that these Defendants engaged in any action that was arbitrary, in bad faith, or unconscionable.

85. Plaintiff has failed to state a claim upon which relief may be granted as to the Sixth Cause of Action (Veil Piercing), which should be dismissed pursuant to Rule 12(b)(6), SCRCP,

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upon the grounds that Plaintiff has failed to plead any facts showing that Peacock Automotive failed to observe corporate formalities.

FOR A THIRD DEFENSE TO ALL CAUSES OF ACTION
(UNCLEAN HANDS)

86. Defendants reallege their previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent.

87. To the extent that Plaintiff seeks equitable relief from Defendants, Plaintiff's own inequitable conduct constitutes unclean hands and therefore bars the granting of equitable relief to Plaintiff.

FOR A FOURTH DEFENSE AS TO ALL CAUSES OF ACTION
(FRAUD IN THE INDUCEMENT)

88. Defendants reallege their previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent.

89. Plaintiff misrepresented its net profit and financial condition and that it was acting in the ordinary course of business.

90. Plaintiff's representation was material to each of the APAs.

91. Plaintiff knew its representations were false or acted in reckless disregard for the truth.

92. Plaintiff intended that Defendants act upon its representations and Peacock Automotive did act upon those representations.

93. Defendants had a right to rely upon Plaintiff's representations.

94. Defendants have been injured as consequent and proximate result of its reliance on Plaintiff's representations.

95. Plaintiff's claims are barred by its fraudulent inducement.

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FOR A FIFTH DEFENSE TO ALL CAUSES OF ACTION
(FAILURE OF CONDITIONS PRECEDENT TO CLOSING)

96. Defendants reallege their previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent.

97. Plaintiff failed to meet all the conditions precedent in the APAs, including the following:

A. Plaintiff failed to conduct the Dealerships' businesses in the ordinary course to preserve the goodwill value of the Dealerships which was the basis for the purchase price under the APAs.

B. Plaintiff failed to use best efforts to operate and preserve the business and goodwill of the Dealerships which was the basis for the purchase price under the APAs.

C. Plaintiff failed to provide complete and accurate financial statements and data to Defendants.

D. Plaintiff warranted and represented at paragraph 13(1) of the APAs that all financial statements and data furnished by the Plaintiff to the Buyer "are true and accurate representations of the financial condition of the Plaintiff as of the date of such statements or reports." Furthermore, under paragraph 15(a) of the APAs, Plaintiff agreed that it would not take any action which would cause any representation or warranty made in the APAs to be incorrect in any material respect if such representation or warranty were made on any date from the Effective Date of the APAs through and including the Closing Date. Moreover, pursuant to paragraphs 16(e) and (f) of the APAs, all of the Plaintiff's representations and warranties "shall be true and correct in all material respects on the Closing Date." Plaintiff's false and misleading financial data presented to Defendants breached the representations and warranties under the APAs.

E. Plaintiff agreed to assume the risk of loss or damage to the dealership assets that may occur before closing.

98. Plaintiff's failure to meet all the conditions precedent relieves Defendants of any duty to purchase the Dealerships and acts as a complete bar to Plaintiff's claims.

FOR A SIXTH DEFENSE AS TO ALL CAUSES OF ACTION (WAIVER)

99. Defendants reallege their previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent.

100. Some or all of the claims asserted by Plaintiff are barred by the doctrine of waiver.

101. Plaintiff entered into the APAs that provided certain rights to Plaintiff, as set forth in the APAs, and known to Plaintiff, subject to all terms and conditions precedent contained therein.

102. Plaintiff has voluntarily and intentionally abandoned and relinquished its rights under the APAs.

103. Therefore, to the extent Plaintiff suffered damages, which is denied, they are barred.

FOR A SEVENTH DEFENSE AS TO ALL CAUSES OF ACTION (EQUITABLE ESTOPPEL)

104. Defendants reallege their previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent.

105. Some or all of the claims asserted by Plaintiff are barred by the doctrine of equitable estoppel.

106. Plaintiff had knowledge of Defendants' right to rely on the representations in the disclosed financial statements of Plaintiff.

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107. Plaintiff intended that Defendants rely on its acts or omissions concerning Plaintiff's financial statements and financial matters that were withheld from Defendants by Plaintiff's refusal to send the financial statements.

108. Defendants were ignorant of the true facts concerning the net profitability of the Dealerships and Peacock Automotive detrimentally relied on financial statements provided by Plaintiff which misrepresented the net profitability and therefor, the goodwill of the two dealerships Plaintiff hoped to sell.

FOR AN EIGHTH DEFENSE AS TO ALL CAUSES OF ACTION (LIQUIDATED DAMAGES)

109. Defendants reallege their previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent.

110. Plaintiff's claim and sole remedy, in the event it is entitled to recover damages, is limited to the recovery of liquidated damages in the amount of $100,000, which shall serve as liquidated damages for both APAs pursuant to paragraph 20(d) of the Chevrolet APA and paragraph 20 of the Hyundai APA.

FOR A NINTH DEFENSE AS TO ALL CAUSES OF ACTION (FAILURE TO MITIGATE)

111. Defendants reallege their previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent.

112. To the extent Plaintiff suffered damages, which is denied, Plaintiff failed to mitigate its damages.

113. To the extent Plaintiff failed to mitigate its damages, they are barred.

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FOR A TENTH DEFENSE AS TO ALL CAUSES OF ACTION (PLAINTIFF'S MATERIAL BREACHES OF THE APAS)

114. Defendants reallege their previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent.

115. Plaintiff's claims are precluded and the APAs were lawfully terminated because of Plaintiff's material breaches of the APAs which caused the failure of the conditions precedent to closing set forth in Paragraph 96 above.

116. The APAs were lawfully terminated as a consequence of Plaintiff's material breaches of the APAs which acts as a complete bar to Plaintiff's claims.

FOR AN ELEVENTH DEFENSE AS TO ALL CAUSES OF ACTION (DEFENDANTS' LAWFUL TERMINATION OF THE APAS)

117. Defendants reallege their previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent.

118. Plaintiff's claims are precluded and the APAs were lawfully terminated because of Plaintiff's material breaches of the APAs including:

A. Section 15(a) - Plaintiff failed to conduct the Dealerships' business in the ordinary course to preserve the goodwill value of the Dealerships which was the basis for the purchase price.

B. Section 15(b) – Plaintiff failed to use best efforts to operate and preserve the business and goodwill of the Dealerships which was the basis for the purchase price.

C. Section 15(c) – Plaintiff failed to provide the February Financial Statements and documents for the Dealerships to Peacock Automotive.

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D. Plaintiff warranted and represented at paragraph 13(1) of the APAs that all financial statements and data furnished by Plaintiff to the Buyer "are true and accurate representations of the financial condition of Plaintiff as of the date of such statements or reports." Furthermore, under paragraph 15(a) of the APAs, Plaintiff agreed that it would not take any action which would cause any representation or warranty made in the APAs to be incorrect in any material respect if such representation or warranty were made on any date from the Effective Date of the APAs through and including the Closing Date. Moreover, pursuant to paragraphs 16(e) and (f) of the APAs, all of the Plaintiff's representations and warranties "shall be true and correct in all material respects on the Closing Date." Plaintiff's false and misleading financial data presented to Defendants breached the representations and warranties under the APAs.

E. Plaintiff admitted by oral and written statements made to Defendants by its President, Edward M. Stivers, III, currently ongoing mismanagement at the Dealerships, shows Plaintiff's failure to operate the Dealerships in the ordinary course and Plaintiff's failure to use best efforts to maintain and preserve the business and goodwill value of the Dealerships, which was the basis for the purchase price.

119. The APAs were lawfully terminated as a consequence of Plaintiff's fraud in the inducement and material breaches of the APAs and acts as a complete bar to Plaintiff's claims.

FOR A TWELFTH DEFENSE AS TO ALL CAUSES OF ACTION (NO LEGAL BASIS FOR CLAIMS AGAINST INDIVIDUAL NON-PARTY TO THE APAs)

120. Defendants reallege their previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent.

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121. The individual named as Defendant is not a party to the APAs.

122. Plaintiff's claims against the individual Defendant are precluded because he is not a party to the APAs.

123. Plaintiff's claims against the individual Defendant should be dismissed with prejudice because he is not a party to the APAs.

FOR A THIRTEENTH DEFENSE AS TO ALL CAUSES OF ACTION (DEFENDANTS' ACTIONS WERE LAWFUL, REASONABLE AND UNDERTAKEN IN GOOD FAITH)

124. Defendants reallege their previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent.

125. Plaintiff's claims are precluded and should be dismissed with prejudice because all of the actions of Defendants were lawful, reasonable and undertaken in good faith.

FOR A FOURTEENTH DEFENSE AS TO ALL CAUSES OF ACTION (DEFENDANTS DID NOT VIOLATE THE CONFIDENTIALITY PROVISION OF THE APAs)

126. Defendants reallege their previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent.

127. Defendants did not breach the confidentiality provision of the APAs, therefore, Plaintiff's claim for the breach of a confidentiality provision is precluded and should be dismissed with prejudice.

FOR A FIFTEENTH DEFENSE AS TO ALL CAUSES OF ACTION (IMPOSSIBILITY OF PERFORMANCE)

128. Defendants reallege their previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent.

129. The APA's were lawfully terminated and Plaintiff's claims are precluded as a consequence of the unanticipated, unforeseen and historic COVID-19 Pandemic, the worldwide,

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statewide, and local states of emergency declared by local, state, federal and worldwide governments and response thereto and the principle of impossibility of performance.

FOR A SIXTEENTH DEFENSE AS TO ALL CAUSES OF ACTION (IMPRACTICABILITY OF PERFORMANCE)

130. Defendants reallege their previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent.

131. The APAs were lawfully terminated and Plaintiff's claims are precluded as a consequence of the unanticipated, unforeseen, and historic COVID-19 Pandemic, the worldwide, statewide, and local states of emergency declared by local, state, federal, and worldwide governments, and response thereto, and the principle of impracticality of performance.

FOR A SEVENTEENTH DEFENSE AS TO ALL CAUSES OF ACTION (FRUSTRATION OF PURPOSE AND FUNDAMENTAL BASIS FOR PARTIES' BARGAIN)

132. Defendants reallege their previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent.

133. The APAs were lawfully terminated and Plaintiff's claims are precluded as a consequence of the unanticipated, unforeseen and historic COVID-19 Pandemic, the worldwide government states of emergency and response thereto, and the frustration of purpose, and fundamental basis of the parties' bargain set forth in the APAs.

FOR AN EIGHTEENTH DEFENSE AS TO ALL CAUSES OF ACTION (NO DAMAGES SUFFERED BY PLAINTIFF)

134. Defendants reallege their previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent.

135. Plaintiff's claims are precluded because it has suffered no damages as a consequence of the claims set forth in the Amended Complaint.

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FOR A NINETEENTH DEFENSE AS TO ALL CAUSES OF ACTION (NO DAMAGES CAUSED BY DEFENDANTS)

136. Defendants reallege their previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent.

137. Plaintiff's claims are precluded because it has suffered no damages caused by any wrongful actions of the Defendants.

FOR A TWENTIETH DEFENSE AS TO ALL CAUSES OF ACTION (NO RIGHT TO RECOVER SPECIAL, INDIRECT, OR PUNITIVE DAMAGES)

138. Defendants reallege their previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent.

139. Plaintiff's claims to special, indirect, or punitive damages are precluded by the express terms of paragraph 24(1)(3) of the APAs.

FOR A TWENTY-FIRST DEFENSE AS TO ALL CAUSES OF ACTION (CONSTITUTIONAL DEFENSE)

140. Defendants reallege their previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent.

141. Any award of punitive damages against Defendants will violate rights guaranteed to it by the Constitution of the State of South Carolina for the following reasons:

A. Any award of punitive damages violates the prohibition against excessive fines under Article 1, Section 15 of the Constitution of South Carolina; and

B. Any award of punitive damages violates the guarantee of due process found in Article I, Section 3 of the Constitution of South Carolina because of a lack of objective guidelines on which a jury might base its award and further that such guidelines as exist are arbitrary and void for vagueness.

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FOR A TWENTY-SECOND DEFENSE AS TO ALL CAUSES OF ACTION (CONSTITUTIONAL DEFENSE)

142. Defendants reallege their previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent.

143. Any award of punitive damages against Defendants will violate its rights guaranteed to it under the Constitution of the United States for the following reasons:

A. Any award of punitive damages violates the prohibition of excessive fines found in the Eighth Amendment of the Constitution of the United States as applied to the states by way of the due process clause of the Fourteenth Amendment of the Constitution of the United States; and

B. Any award of punitive damages violates the guarantee of due process found in the Fourteenth Amendment to the Constitution of the United States because of the lack of objective guidelines in which a jury might base its award and further than such guidelines as do exist are arbitrary and void for vagueness.

FOR A TWENTY-THIRD DEFENSE AS TO ALL CAUSES OF ACTION (RISK OF LOSS)

144. Defendants reallege their previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent.

145. Plaintiff contractually agreed to retain the risk of any loss or damage to the dealership assets through the closing date.

FOR A FIRST COUNTERCLAIM (BREACH OF CONTRACT)

146. Defendants reallege their previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent.

147. Peacock Automotive and Plaintiff entered into two Asset Purchase Agreements on

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January 7, 2020.

148. Stivers agreed in Section 15(a) of the APAs:

> From the Effective Date of this Agreement to the Closing Date (the "Interim Period"), unless Buyer consents otherwise in writing, Seller will conduct the Dealership's business only in the ordinary course . . .

Section 15(b) similarly required:

> During the Interim Period, Seller agrees to use its best efforts: to maintain and preserve the business and goodwill of Seller with respect to the Dealership; to maintain and preserve its present relationships with its vendors, suppliers, customers and other third parties; and to retain until Closing (subject to Sections 6(c) and 6(e) above) any employees as to whom Buyer has indicated an interest in hiring after Closing. The foregoing shall not be construed to authorize Seller to make any commitments on behalf of Buyer or otherwise to create any legal obligation of Buyer of any kind.

149. To ensure that Plaintiff was operating in the ordinary course and preserving its good will, it promised to provide access to its books and records (Section 15(c)) and that all data furnished to Peacock Automotive was a true and accurate representation of its financial condition (Section 10(h)).

150. Plaintiff breached the APAs by failing to conduct its business in the ordinary course, failing to preserve its business and goodwill, and failing to provide access to its books and records to Peacock Automotive.

151. Stivers and Peacock Automotive agreed that if the Chevrolet purchase did not close due to no fault of Peacock Automotive, the $100,000 escrow would be returned to Peacock Automotive.

152. Peacock Automotive has been injured as a result of Plaintiff's breach.

153. Peacock Automotive is informed and believes that it is entitled to a return of the escrow, an award of actual damages, and an award of costs and expenses including a reasonable award of attorney's fees, as allowed by both APAs.

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FOR A SECOND COUNTERCLAIM
(BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT)

154. Defendants reallege their previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent.

155. Plaintiff breached the APAs by providing financial statements to Peacock Automotive, LLC that contained misleading financial results that falsely inflated the net profitability and goodwill value of Plaintiff's dealerships.

156. Plaintiff had fraudulent intent relating to the breaching of the contract when it repeatedly refused to provide additional financials, which would have shown that the Plaintiff's dealerships did not have net profitability of $2 million per year as represented and were not being operated in the ordinary course of business, and with best efforts to preserve the business and goodwill of Plaintiff's dealerships.

157. Plaintiff engaged in fraudulent acts that accompanied a breach of contract by providing misleading financial statements and refusing to provide other financial statements which Peacock Automotive had a contractual right to receive.

FOR A THIRD COUNTERCLAIM
(FRAUD IN THE INDUCEMENT)

158. Defendants reallege their previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent.

159. Any potential purchase of a dealership is based on the representation of Seller as to the net profitability of the dealership.

160. Plaintiff represented the $2 million net profitability per year, financial condition and value of its dealerships' goodwill, and that it was acting in the ordinary course of business.

161. Plaintiff's representations were false and were material to the contract.

162. Plaintiff knew its representations were false or acted in reckless disregard for the

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truth.

163. Plaintiff intended that Peacock Automotive act upon its representations regarding its $2 million net profitability, goodwill value, financial condition and operations in the signing of the APAs, and Peacock Automotive did act upon those representations.

164. Peacock Automotive had a right to rely, and did rely, upon Plaintiff's representations, and was ignorant of their falsities.

165. Peacock Automotive has been injured as a consequent and proximate result of its reliance on Plaintiff's representations.

166. Peacock Automotive is entitled to actual and punitive damages.

FOR A FOURTH COUNTERCLAIM
(NEGLIGENT MISREPRESENTATION)

167. Defendants reallege their previous answers and defenses to the previous paragraphs of the Amended Complaint where not inconsistent.

168. Plaintiff represented the $2 million net profitability, financial condition and value of its dealerships' goodwill, and that it was acting in the ordinary course of business.

169. Plaintiff's representations were false and were material to the contract.

170. Plaintiff had a pecuniary interest in making the statement.

171. Plaintiff owed a duty of care to see that it communicated truthful information to Peacock Automotive.

172. Plaintiff breached its duty by failing to exercise due care.

173. Peacock Automotive justifiably relied on Stiver's representations.

174. Peacock Automotive has been injured as a consequent and proximate result of its reliance on Plaintiff's representations.

175. Peacock Automotive is entitled to actual and consequential damages.

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PRAYER FOR RELIEF

WHEREFORE, Defendants W. Warner Peacock and Peacock Automotive, LLC pray the Court to:

i. Enter an Order declaring that Plaintiff shall have and recover nothing from these Defendants;

ii. Enter an Order in favor of these Defendants in their counterclaims, for an award of both actual and punitive damages against Plaintiff, including the expenses of this action, including reasonable attorney's fees;

iii. Tax the costs of this action against Plaintiff; and

iv. Provide such other relief as may be just and proper.

July 17, 2020

Respectfully submitted,

s/Laura W.H. Teer
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ATTORNEYS FOR DEFENDANTS PEACOCK AUTOMOTIVE, LLC AND W. WARNER PEACOCK

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CASE NO. 2020-CP-40-01934
STIVERS BROTHERS AUTOMOTIVE, INC.,	)	
Plaintiff,	)	
v.	)	**REPLY TO ANSWER AND COUNTERCLAIMS OF DEFENDANTS PEACOCK AUTOMOTIVE, LLC AND W. WARNER PEACOCK TO PLAINTIFF'S AMENDED COMPLAINT**
W. WARNER PEACOCK and PEACOCK AUTOMOTIVE, LLC,	)	
Defendants.	)	

The Plaintiff, replying to the Answer And Counterclaims of Defendants Peacock Automotive, LLC And W. Warner Peacock To Plaintiff's Amended Complaint, would respectfully show that:

AS TO THE INTRODUCTION AND UNDERLYING FACTS

1. Paragraphs 1-14 should be stricken as redundant, immaterial, or impertinent pursuant to Rule 12(f), SCRCP.

AS TO THE FIRST THROUGH TWENTY THIRD DEFENSES

2. The Plaintiff reaffirms and reiterates all of the allegations contained in the Amended Complaint.

AS TO THE COUNTERCLAIMS

3. Each and every allegation not hereinafter admitted, qualified, or explained is denied and strict proof is demanded thereof.

4. As to the allegations contained in paragraph 146, the Plaintiff reasserts its previous responses thereto.

5. The allegations contained in paragraph 147 are admitted.

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6. As to the allegations contained in paragraphs 148 and 149, the Plaintiff craves reference to the entire contracts for their exact terms and provisions and context. Any allegations contained in paragraphs 148 and 149 inconsistent herewith are denied.

7. The allegations contained in paragraph 150 are denied.

8. As to the allegations contained in paragraph 151, the Plaintiff craves reference to the entire contracts for their exact terms and provisions and context. Any allegations contained in paragraph 151 inconsistent herewith are denied.

9. The allegations contained in paragraphs 152 and 153 are denied.

10. As to the allegations contained in paragraph 154, the Plaintiff reasserts its previous responses thereto.

11. The allegations contained in paragraphs 155, 156, and 157 are denied.

12. As to the allegations contained in paragraph 158, the Plaintiff reasserts its previous responses thereto.

13. The allegations contained in paragraph 159 are denied.

14. As to the allegations contained in paragraph 160, the Plaintiff craves reference to the entire contacts for their exact terms and provisions and context. Any allegations contained in paragraph 160 inconsistent herewith are denied.

15. The allegations contained in paragraphs 161, 162, 163, 164, 165, and 166 are denied.

16. As to the allegations contained in paragraph 167, the Plaintiff reasserts its previous responses thereto.

17. As to the allegations contained in paragraph 168, the Plaintiff craves reference to the entire contracts for their exact terms and conditions and context. Any allegations

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contained in paragraph 168 inconsistent herewith are denied.

18. The allegations contained in paragraph 169 are denied.

19. The allegations contained in paragraphs 170 and 171 are admitted.

20. The allegations contained in paragraph 172 are denied.

21. The allegations contained in paragraphs 173, 174, and 175 are denied.

WHEREFORE, having fully replied to the Answer And Counterclaims of Defendants Peacock Automotive, LLC And W. Warner Peacock To Plaintiff's Amended Complaint, the Plaintiff prays that the same be dismissed with costs, that it be given judgment on its Amended Complaint, and for such other and further relief as the Court may deem just and proper.

STUDEMEYER LAW FIRM, P.C.

By: s/J. Gregory Studemeyer
J. Gregory Studemeyer
SC Bar #5416
7478 Carlisle Street
Post Office Box 1014
Irmo, South Carolina 29063
803-393-4399
Attorney for the Plaintiff

Irmo, South Carolina

July 29, 2020

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FIFTH JUDICIAL CIRCUIT**
COUNTY OF RICHLAND	)	
	)	C/A NO. 2020-CP-40-01934
STIVERS BROTHERS AUTOMOTIVE, INC.,	)	
	)	
Plaintiff,	)	**PEACOCK AUTOMOTIVE AND WARNER PEACOCK'S MOTION AND MEMORANDUM FOR SUMMARY JUDGMENT**
v.	)	
	)	
W. WARNER PEACOCK and PEACOCK AUTOMOTIVE, LLC,	)	
	)	
Defendants.	)	
_____	)	

The Defendants, Peacock Automotive, LLC ("Peacock Automotive"), and W. Warner Peacock ("Warner"), by and through their undersigned attorneys and pursuant to Rule 56, *South Carolina Rules of Civil Procedure*, move the Court for summary judgment against the Plaintiff, Stivers Brothers Automotive, Inc. ("Stivers") as follows:

1) specific performance of the Hyundai/Genesis APA as Stivers has requested in its Complaint and Amended Complaint;
2) the dismissal of Stivers' remaining claims or for dismissal of Stivers' Amended Complaint with prejudice for failure to mitigate its damages, attorneys' fees and costs; and
3) for failure to prove any damages as a consequence of the alleged breach of the Chevrolet and Hyundai/Genesis APAs by Peacock Automotive.

The grounds for this Motion are that the pleadings on file, together with the Affidavit of J. Gregory Humphries (attached hereto) demonstrate that there is no genuine issue of material fact and the Defendants are entitled to a final summary judgment against Stivers as a matter of law. The particular grounds for this Motion follow.

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Summary of Defendants' Argument

Stivers sued Peacock Automotive and Warner for specific performance of each of "two separate Asset Purchase Agreements (APAs)" for the purchase of its Chevrolet and Hyundai/Genesis dealerships in Columbia, South Carolina. Stivers' Complaint was filed on April 13, 2020, in which it asked for specific performance and an award of actual damages if specific performance could not be had (Complaint ¶ 67). In its Amended Complaint, filed three months later on July 2, 2020, Stivers again requested specific performance (Amended Complaint ¶ 76). Stivers sold the Chevrolet dealership, upon information, to Jim Hudson Automotive on October 7, 2020 for the same price and terms as the Chevrolet APA with Peacock Automotive; this sale thereby fully avoiding any and all asserted damages from the alleged breach of the Chevrolet APA.

Moreover, on July 23, 2020, and then again on October 26, 2020, Peacock Automotive submitted signed APAs to Stivers for the purchase of the Hyundai/Genesis dealership for the same price but better terms than the initial Peacock Automotive APA for the Stivers' Hyundai/Genesis dealership. The improved offers included payment of the purchase price in cash, an assumption of the real estate lease, and reimbursement for Stivers' attorneys' fees and costs. Stivers has declined to execute and close these two Hyundai/Genesis APAs which would completely avoid its alleged damages, attorneys' fees and costs.

Stivers agreed in the original APAs that it would bear the risk of loss for any decrease in the value of the dealership prior to closing (¶24(q)). Stivers also agreed that if specific performance was not sought, damages would be limited to the escrow deposit (¶20(d), Chevrolet APA) and that indirect, special, and punitive damages were unrecoverable (¶24(e)(3)).

Therefore, Peacock Automotive and Warner move the Court for specific performance as to the Hyundai/Genesis APA as requested by Stivers in its Complaint and Amended Complaint and otherwise dismissing Stivers' Amended Complaint for lack of damages. Alternatively, the

Defendants request that the Court enter summary judgment dismissing Stivers' Amended Complaint with prejudice as a consequence of Stivers failure to mitigate its damages, attorneys' fees and costs, and failure to prove any damage as a consequence of the alleged breach of the Chevrolet and Hyundai/Genesis APAs. Further, Defendants request the Court to limit Plaintiff's damages to the escrow deposit, prohibit any recovery of indirect, special, and punitive damages, and find that Plaintiff bears the risk of loss.

Statement of Undisputed Facts

Stivers sued Peacock Automotive and Warner for specific performance of each of "two separate Asset Purchase Agreements (APAs)" for the purchase of its Chevrolet and Hyundai/Genesis dealerships in Columbia, South Carolina. Stivers' Complaint was filed on April 13, 2020 and its Amended Complaint was filed three months later on July 2, 2020.

Stivers sold the Chevrolet dealership, upon information, to Jim Hudson Automotive on October 7, 2020 for the same price and terms as the Chevrolet APA with Peacock Automotive, thereby fully avoiding any and all asserted damages from the alleged breach of the Chevrolet APA.

Moreover, on July 23, 2020, and then again on October 26, 2020, Peacock Automotive and Warner submitted a signed APA to Stivers for the purchase of the Hyundai/Genesis dealership for the same price and better terms as the initial Peacock Automotive APA, including an assignment of the real estate lease and reimbursement for all of Stivers' attorneys' fees and costs. (Affidavit of Greg Humphries, APAs to be filed under Motion to Seal) Stivers has declined and refused to execute and close these two Hyundai/Genesis APAs which would completely avoid its alleged damages, attorneys' fees and costs. (Affidavit of Greg Humphries)

Finally, Stivers agreed in the original APA that:

1) it would bear the risk of loss prior to closing;

2) it accepted liquidated damages in the amount of the escrow deposit; and

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3) it would eschew any indirect, special, and punitive damages.

Standard of Review

Under Rule 56, *SCRCP*, summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Pittman v. Grand Strand Entm't, Inc.*, 363 S.C. 531, 536, 611 S.E. 2d 922, 925 (2005); *Eagle Container Co., LLC v. County of Newberry*, 366 S.C. 611, 619-620, 622 S.E. 2d 733, 737 (Ct. App. 2005). Summary Judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), *SCRCP*; *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 344, 338, 611 S.E. 2d 485, 487 (2005); *BPS, Inc. v. Worthy*, 362 S.C. 319, 324, 608 S.E. 2d 155, 158 (Ct. App. 2005).

When reasonable minds cannot differ on plain, palpable, and indisputable facts, summary judgment should be granted. *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E. 2d 817, 822 (Ct. App. 2004). Moreover, once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the non-moving party cannot simply rest on mere allegations or denials contained in the pleadings. *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E. 2d 432, 438 (Ct. App. 2003). The nonmoving party must come forward with specific facts showing there is a genuine issue for trial. *Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 220, 616 S.E.2d 722; 730 (Ct. App. 2005).

Judged by this standard, a summary judgment for specific performance of the Hyundai/Genesis APA or for dismissal of Stivers' Amended Complaint is appropriate.

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Legal Argument

Stivers Seeks Specific Performance of the Hyundai/Genesis APA and Peacock Automotive Has Agreed to Perform the Contract

Here, Stivers twice seeks specific performance of the Hyundai/Genesis APA in its Complaint and Amended Complaint and Peacock Automotive has agreed to perform the contract. Therefore, specific performance may be granted. In *Wightman v. Reside*, 2 Des. 578 (S.C. Ct. of Chan., June 1808), the South Carolina Supreme Court ordered specific performance based on the plaintiff's complaint and the defendant's willingness to perform. In *Kacirek v. Clifford*, 2005 WL 3098929 (New Jersey Superior Court, Chancery Division, 2005), plaintiff filed a complaint for specific performance and the defendant filed a motion for specific performance and to set a closing date. Since the plaintiff sought specific performance, the Court found he must be willing to accept the terms of the contract he wanted specifically enforced. Moreover, defendant was willing to perform on the contract and agreed with Count Two of plaintiff's complaint calling for specific performance. Therefore, specific performance was the appropriate remedy.

Also, in *Cave v. Kollar*, 2 A.D. 3d 386 (N.Y. Sup. Ct. App. Div. 2nd Dept. 2003), the plaintiff sought specific performance and defendant's motion for summary judgment to compel specific performance was granted. Finally, in *Turi v. Marotta*, 281 A.D. 805 (N.Y. Sup. Ct. App. Div 4th Dept. 1953), the plaintiff sought specific performance and defendant expressed his willingness to perform, so the court ordered specific performance on the defendant's motion. Therefore, since Peacock Automotive and Warner Peacock have agreed to specific performance in this case, it is required to be compelled.

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The Doctrine of Avoidable Consequences and The Duty to Mitigate Damages

A party who has suffered damage from the actionable conduct of another is under a duty to make all reasonable efforts to minimize the damages incurred. Moreover, the Plaintiff cannot recover damages that might have been avoided by the use of reasonable care and diligence.[1] Thus, Plaintiff is required to do what an ordinary, prudent person would do under similar circumstances to mitigate his damages.[2]

To recover under a breach of contract theory, Plaintiff bears the burden of showing the existence of a contract, its breach, and damages resulting therefrom. *Fuller v. E. Fire & Cas. Ins., Co.*, 240 S.C. 75, 89, 124 S.E. 2d 602, 610 (1962). Moreover, the duty to mitigate applies to contract claims. *Cisson Const., Inc. v. Reynolds & Assocs., Inc.*, 311 S.C. 499, 503, 429 S.E. 2d 847, 849 (Ct. App. 1993).[3]

In *Westinghouse Electric & Mfg. Co. v. Glencoe Cotton Mills*, 106 S.C. 133, 138, 90 S.E. 526, 527 (1916), a breach of a contract action, the South Carolina Supreme Court explained a claimant's duty to prove and minimize damages, and the limitation of damages when the party fails to mitigate:

> [I]t was competent for defendant to prove all defects that developed within 30 days from starting and all subsequent efforts to correct such defects, and the damages proximately resulting therefrom, after the lapse of a reasonable time for plaintiff to correct them, because after the rights and obligations of the parties became fixed under the contract

[1] *Newman v. Brown*, 228 S.C. 472, 480, 90 S.E. 2d 649, 653 (1955) (It is the undoubted general rule that it is the duty of the owner of the property, which is injured by the negligence of another, to use reasonable means to minimize the damages.); *Currie v. Davis*, 130 S.C. 408, 422, 126 S.E. 119, 124 (1923) (affirming a jury instruction stating it is the duty of the injured party to mitigate his damages); *Cobb v. Western Union Tel. Co.*, 85 S.C. 430, 433, 67 S.E. 549, 551 (1910); *Sullivan v. Anderson*, 81 S.C. 478, 480, 62 S.E. 862, 863 (1908); *Jones v. Telegraph Co.*, 75 S.C. 208, 213-214, 55 S.E. 318, 320 (1906); *Willis v. Telegraph Co.*, 69 S.C. 531, 539, 48 S.E. 538, 540 (1904).

[2] *Du Bose v. Bultman*, 215 S.C. 468, 471, 56 S.E. 2d 95, 96 (1949); *Fewell v. Catawba Power Co.*, 102 S.C. 452, 464, 86 S.E. 947, 950 (1915) (stating one seeking to hold another liable for damages must use reasonable efforts to mitigate such damages); *M.C. Heath & Co. v. Postal Telegraph-Cable Co.*, 87 S.C. 219, 234, 69 S.E. 283, 287-288 (1910) (holding there is a duty to minimize damages as a reasonable, prudent person would under like circumstances).

[3] *See also*, *Mid-Continent Refrigerator Co. v. Way*, 263 S.C. 101, 106, 208 S.E. 2d 31, 33 (1974); *U.S. Rubber Co. v. White Tire Co.*, 231 S.C. 84, 95, 97 S.E. 2d 403, 409 (1956) (holding a landlord is under a duty to minimize damages upon tenant's breach of lease); *Burkhalter v. Townsend*, 139 S.C. 324, 332, 138 S.E. 34, 37 (1927).

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> by the development of the defects within the time therein specified, and report thereof to plaintiff as required by the contract, plaintiff's obligation was to correct the defects within a reasonable time; and, if it failed to do so, it became liable under the warranty for the damages that proximately resulted during such time as the circumstances justified a reasonable belief that the cause of the trouble might be discovered and corrected, of course, even during that time, it was defendant's duty to reasonably exert itself to minimize the damages, and such as might have been averted by reasonable efforts are not proximate, and therefore not recoverable.

The doctrine of avoidable consequences is synonymous with mitigation of damages. In *Smalls v. Springs Industries, Inc.*, 300 S.C. 481, 484-485, 388 S.E. 2d 808, 810-811 (1990), the South Carolina Supreme Court stated, "[t]he doctrine of avoidable consequences operates in wrongful discharge actions, as in others, to permit a wrongfully discharged employee to recover only damages for losses which, in the exercise of due diligence, he could not avoid." Accordingly, the plaintiff was precluded from recovering any alleged lost future wages because she had declined to accept the defendant's unconditional offer of reinstatement.

Stivers has a duty to mitigate its damages. It demanded specific performance in its Complaint and Amended Complaint and Peacock Automotive has agreed to specific performance. Defendants respectfully request this Court to find, as a matter of law, that Stivers is barred from claiming any damages incurred as a result of its refusal to accept specific performance, or otherwise mitigate its damages.

Plaintiff's Burden to Prove Breach and Damages

When there is an action for the breach of a contract, Plaintiff must not only prove the contract and its breach, but damages caused by the breach. *Jackson v. Midlands Human Resources Ctr.*, 396 S.C. 526, 528, 374 S.E. 2d 505, 506 (Ct. App. 1988); *Baughman v. Southern Ry. Co.*, 127 S.C. 493, 495, 121 S.E. 356, 356 (1924). Furthermore, damages recoverable for breach of contract either must flow as a natural consequence of the breach or must have been reasonably within the parties' contemplation at the time of the contract. *Manning v. City of Columbia*, 297

S.C. 451, 455, 377 S.E. 2d 335, 337 (1989) (citing *Kline Iron & Steel Co. v. Superior Trucking Co.*, 261 S.C. 542, 547, 201 S.E. 2d 388, 390 (1973)).[4]

Thus, when there is a breach, the amount of damages should put the non-breaching party in the position he would be in had the contract been performed. *Stiles v. American Gen. Life Ins. Co.*, 335 S.C. 222, 227, 516 S.E. 2d 449, 451 (1999) (Toal, J., dissenting) ("This measure of damages allows an employee to receive the benefit of the bargain by placing the employee in as good a position as if the contract had been performed.") (citing *Shivers v. John H. Harland Co., Inc.*, 310 S.C. 217, 221, 423 S.E. 2d 105, 108 (1992)); *Minter v. GOCT, Inc.*, 322 S.C. 525, 528, 473 S.E. 2d 67, 70 (Ct. App. 1996). Thus, the measure of damages for breach of contract is the loss actually suffered by the contractee as a result of the breach. *South Carolina Fin. Corp. v. West Side Fin. Co.*, 236 S.C. 109, 122, 113 S.E. 2d 329, 335 (1960) (citing 15 Am. Jur., Damages, Section 43); *Drews Co. v. Ledwith-Wolfe Assoc.*, 296 S.C. 207, 210, 371 S.E. 2d 532, 534 (1988); *Minter*, 322 S.C. at 528, 473 S.E. 2d at 70.

Defendants' Burden: Mitigation Should be Possible and Reasonable

A defendant who claims a plaintiff's damages could have been mitigated has the burden of proving that mitigation is possible and reasonable. *Chastain v. Owens Carolina, Inc.*, 310 S.C. 417, 420, 426 S.E. 2d 834, 835 (1993); *Moore v. Moore*, 360 S.C. 241, 262, 599 S.E. 2d 467, 478 (Ct. App. 2004) (upholding the rule "defendants have the burden of proving a plaintiff's damages could have been avoided, reduced, or minimized.").

The reasonableness of a party's actions to mitigate damages is a question of fact which cannot be decided as a matter of law only when conflicting evidence is presented. *Chastain*, 310 S.C. at 420, 426 S.E. 2d at 836; *Hinton v. Designer Ensembles, Inc.*, 335 S.C. 305, 320, 516 S.E.

[4] *See also, Holmes v. Nationwide Life Ins. Co.*, 273 S.C. 711, 715, 258 S.E. 2d 924, 926 (1979); *Fuller v. Eastern Fire & Cas. Inc. Co.*, 240 S.C. 75, 89, 124 S.E. 2d 602, 610 (1962); *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 595, 493 S.E. 2d 875, 880 (Ct. App. 1997).

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2d 665, 672 (Ct. App. 1999) overruled on other grounds by *Hinton v. Designer Ensembles, Inc.*, 343 S.C. 236, 246, 545 S.E. 2d 94, 99 (2000).

Here, Stivers twice sued Peacock Automotive and Warner for specific performance of each of "two separate Asset Purchase Agreements (APAs)" for the purchase of its Chevrolet and Hyundai/Genesis dealerships in Columbia, South Carolina. (Complaint ¶ 67, Amended Complaint ¶ 76).

Stivers sold the Chevrolet dealership, upon information, to Jim Hudson Automotive on October 7, 2020 for the same price and terms as the Chevrolet APA with Peacock Automotive, thereby fully avoiding any and all asserted damages from the alleged breach of the Chevrolet APA.

Moreover, on July 23, 2020 and then again on October 26, 2020, Peacock Automotive and Warner submitted signed APAs to Stivers for the purchase of the Hyundai/Genesis dealership for the same price and better terms as the initial Peacock Automotive APA for the Stivers' Hyundai/Genesis dealership, including an assignment of the real estate lease and reimbursement for all of Stivers' attorneys' fees and costs. Stivers has declined to execute and close these two Hyundai/Genesis APAs which would completely avoid its alleged damages, attorneys' fees and costs.

In *Smalls v. Springs Industries, Inc.*, 300 S.C. 481, 388 S.E.2d 808 (1990), the plaintiff's claim for lost future wages was precluded by her failure to accept a reinstated contract:

> An employee seeking damages for breach of an employment contract has a duty to mitigate those damages. The question before us is whether this duty to mitigate requires an employee to accept an unconditional offer of reinstatement. We hold it does. *Id* 300 S.C. at 490.

In *Spurgeon v. Drumheller*, 174 Cal. App. 3d 659 (1985), the plaintiffs'/sellers' claim against the defendant/buyer for breach of a contract for the sale of real estate was dismissed, as a matter of law, because the plaintiffs/sellers did not fulfill their duty to mitigate damages. The decision to take the property off the market was solely in the control of the plaintiffs/sellers and

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the value at the time of the trial exceeded the contract price, plus expenses. Thus, the Court held "respondents' duty to mitigate is not satisfied and they can no longer maintain their action for damages."

Similarly, in *Schiavi Motor Homes, Inc. v. Gironda*, 463 A. 2d 722 (Maine 1983), the seller of a mobile home was denied damages and expenses because he refused to sell the mobile home to the Defendant's father on the same terms and conditions as the son's contract in alleged breach:

> In order to minimize its damages, the Plaintiff should have sold the mobile home to Frank Gironda, Sr.… Accordingly, because the Plaintiff failed to sell the home to Frank Gironda, Sr., it cannot now be heard to complain that its sale to a third party resulted in lost profits.

Therefore, the Court should grant summary judgment of specific performance as to the Hyundai/Genesis APA as requested by Stivers in its Complaint and Amended Complaint, and otherwise dismiss Stivers' Amended Complaint for lack of damage. Alternatively, the Defendants request that the Court enter summary judgment dismissing Stivers' Amended Complaint with prejudice as a consequence of Stivers failure to completely mitigate its damages, attorneys' fees and costs, and failure to prove any damage as a consequence of the alleged breach of the Chevrolet and Hyundai/Genesis APAs.

Liquidated Damages

If specific performance is not granted, Stivers is limited under the APAs, as a matter of law, to its escrow deposit. Pursuant to Paragraph 20(a) of the Chevrolet APA, Peacock placed a $100,000 escrow deposit with the Escrow Agent. Paragraph 20(d) of the Chevrolet APA expressly provides that:

> (d) In the event that Buyer defaults upon the terms of this Agreement, without there being fault or failure to perform by Seller, the Escrow Deposit shall be forfeited to Seller as liquidated damages, and Seller shall have no further claim against Buyer.

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Furthermore, Paragraph 20 of the Hyundai APA confirms that the $100,000 escrow deposit shall serve as an earnest money deposit for both APAs; the Hyundai APA is one facet of a two-part transaction, and the Chevrolet APA is referred to in the Hyundai APA as part of the "Transaction Agreements." Therefore, the liquidated damages provision applies to both transactions.

Risk of Loss

To the extent Stivers claims it sustained damages because of a decrease in the value of the dealership as of the termination of the APAs, those claims are precluded because Stivers agreed to bear the risk of any loss or damage to the tangible and intangible assets of the Dealerships occurring between the execution of the APAs and the closing thereof pursuant to Paragraph 24(q) of the APAs.

Limitation of Damages

The parties also agreed in both APAs (paragraphs 24(l)(3)) that neither would be subject to indirect, special, or punitive damages. When a contract is entered into freely and voluntarily, contractual limitations are normally enforced. *Maybank v. BB&T Corp.*, 416 S.C. 541, 787 S.E.2d 498 (2016).[5] Therefore, the Court should find, as a matter of law, that Plaintiff is barred from recovering any indirect, special, or punitive damages.

WHEREFORE, Peacock Automotive and Warner move the Court for the entry of summary judgment for specific performance of the Hyundai/Genesis APA as requested by Stivers

[5] *See, e.g. Ellis v. Taylor* , 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994); *Gladden v. Boykin*, 402 S.C. 140, 144–45, 739 S.E.2d 882, 884 (2013) (upholding a limitation of liability provision in a home inspection agreement which confined the liability of the inspection company to "a sum equal to the amount of the fee paid by the client for this inspection," and finding the clause neither unconscionable nor violative of public policy); *Huckaby v. Confederate Motor Speedway, Inc*., 276 S.C. 629, 630, 281 S.E.2d 223, 224 (1981) (finding plaintiff's action against speedway for injuries sustained during a race was barred by a waiver and release voluntarily signed by plaintiff prior to entering the racetrack); *McCune v. Myrtle Beach Indoor Shooting Range, Inc.*, 364 S.C. 242, 248, 612 S.E.2d 462, 465 (Ct. App. 2005) (upholding a release which explicitly and unambiguously limited paintball range's liability for negligence); *S.C. Elec. & Gas Co. v. Combustion Eng'g, Inc.*, 283 S.C. 182, 192, 322 S.E.2d 453, 459 (Ct. App. 1984) (enforcing the language of an exculpatory clause in a contract for the sale of a boiler).

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in its Complaint and Amended Complaint and otherwise dismiss Stivers' Amended Complaint for lack of damage or for dismissal of Stivers' Amended Complaint with prejudice for failure to mitigate its damages, attorneys' fees and costs and failure to prove damages.

Finally, Peacock Automotive and Warner Peacock move the Court for the entry of Summary Judgment as Stivers bore the risk of loss and agreed to both limitations on its damages and liquidated damages.

DATED this 4th day of December, 2020.

Respectfully submitted,

s/Bradford N. Martin
Bradford N. Martin, Esq. (SC Bar No. 3658)
Laura W. H. Teer, Esq. (SC Bar No. 16698)
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ATTORNEYS FOR DEFENDANTS
PEACOCK AUTOMOTIVE, LLC AND
W. WARNER PEACOCK

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FIFTH JUDICIAL CIRCUIT**
COUNTY OF RICHLAND	)	
	)	C/A NO. 2020-CP-40-01934
STIVERS BROTHERS AUTOMOTIVE, INC.,	)	**AFFIDAVIT OF J. GREGORY HUMPHRIES**
Plaintiff,	)	
v.	)	
W. WARNER PEACOCK and PEACOCK AUTOMOTIVE, LLC,	)	
Defendants.	)	

PERSONALLY APPEARED before me, the undersigned, who being duly sworn, deposes and states as follows:

1. I am over the age of 18 and competent to make this Affidavit.

2. Except for matters stated upon information and belief, I have personal knowledge of the facts contained in this Affidavit.

3. I am an attorney at law practicing in the area of corporate transactions in Orlando Florida. The firm of Shutts & Bowen, LLP has acted as a transactional counsel on behalf of Peacock Automotive, LLC regarding the purchase of the Hyundai dealership in Columbia from Stivers Brothers Automotive, Inc.

4. I have represented the Defendants for many years and was tasked with preparing contracts for the purchase and sale of two Columbia, South Carolina motor vehicles dealerships owned by the Stivers (Chevrolet and Hyundai/Genesis).

5. I communicated directly with Stivers' attorney Rick McBride, Jr., of Montgomery Alabama.

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6. After the original APAs of January 7, 2020 were terminated by letter of March 27, 2020, I contacted Mr. McBride to discuss the purchase of the Hyundai/Genesis dealership.

7. I prepared a formal Letter of Intent ("LOI") and transmitted it to Mr. McBride on June 11, 2020 for the purchase of the Hyundai/Genesis dealership.

8. I received a counter proposal Asset Purchase Agreement from Mr. McBride on June 22, 2020.

9. I sent a signed APA to Mr. McBride on July 23 for the purchase of the Hyundai/Genesis dealership. (Exhibit A) The new APA provided that the payment would be all cash up front, that Purchaser would assume any extensions of the lease that Stivers had entered into, and would provide an additional payment of up to $200,000 for Seller's attorneys' fees and costs.

10. I once again sent an executed APA to Mr. McBride on behalf of my clients on October 26, 2020. (Exhibit B)

11. Both Agreements were executed would have been effective upon signing by the Seller.

12. Despite the fact that the price was the same as agreed to in January, and the terms were more favorable to Stivers, I never received a signed APA in response.

13. It is my belief that Stivers sold the Chevrolet dealership to another purchaser and that sale closed one or about October 7, 2020. (Exhibit C)

FURTHER AFFIANT SAYETH NOT.

J. Gregory Humphries

SWORN TO before me this 4th

day of December, 2020.

Tracy Augustyni

Notary Public for Florida

My Commission Expires: _____



TRACY AUGUSTYNI
Commission # GG 306524
Expires May 20, 2023
Bonded Thru Budget Notary Services

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From: J. Gregory Humphries
Sent: Thursday, July 23, 2020 3:50 PM
To: Rick McBride Jr. (rick@mcbridelawllc.com)
Subject: Stivers/Peacock

ELECTRONICALLY FILED - 2020 Dec 04 3:11 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

Rick, In an effort to continue to seek resolution of our clients dispute, I am attaching a revised version of the contract to sell the Columbia Hyundai dealership, together with a signature page executed by Mr. Peacock. As you can see in the attached redline, we have made a few revisions that deal with the logistics of the process of obtaining approvals and closing on the acquisition. We have also eliminated the Chevy Transaction contingency which has perhaps resolved itself at this point as you are closer to consummating that transaction. If your clients would like to move forward pursuant to this contract, please advise prior to COB on Monday July 27. If we do not have an acceptance by that time, then the offer shall automatically be withdrawn.

Any questions, let me know. Thanks, Greg

Shutts

J. Gregory Humphries
Partner

Shutts & Bowen LLP
300 South Orange Avenue, Suite 1600 | Orlando, FL 32801
Direct: (407) 835-6940 | Fax: (407) 849-7240
E-Mail | Biography | V-Card | Website

Exhibit A to
Affidavit of J. Gregory Humphries

Asset Purchase and Sale Agreement dated July 23, 2020

To be filed pursuant to Motion to Seal dated December 4, 2020

ELECTRONICALLY FILED - 2020 Dec 04 3:11 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

ELECTRONICALLY FILED - 2020 Dec 04 3:11 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

From: J. Gregory Humphries <JHumphries@shutts.com>
Sent: Monday, October 26, 2020 1:14 PM
To: Rick McBride Jr. (rick@mcbridelawllc.com) <rick@mcbridelawllc.com>
Cc: John M. "Jay" Brennan <Jay.Brennan@gray-robinson.com>
Subject: Peacock Stivers - Hyundai

ELECTRONICALLY FILED - 2020 Dec 04 3:11 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

This message originated outside of GrayRobinson.

Rick, We understand that you have had a successful closing on the Chevrolet dealership in Columbia. In light of that matter being concluded, we would again like to advance our offer to purchase the Hyundai dealership. Attached is an APA executed by Mr. Peacock. We assume to attorney fee issue can now be quantified and will incorporate if you can provide the info. I have also attached a marked copy to the last document we sent to you. Any questions, let me know. Thanks, Greg

Shutts

J. Gregory Humphries
Partner

Shutts & Bowen LLP
300 South Orange Avenue, Suite 1600 | Orlando, FL 32801
Direct: (407) 835-6940 | Fax: (407) 849-7240
E-Mail | Biography | V-Card | Website

Exhibit B to
Affidavit of J. Gregory Humphries

ELECTRONICALLY FILED - 2020 Dec 04 3:11 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

Asset Purchase and Sale Agreement dated October 26, 2020

To be filed pursuant to Motion to Seal dated December 4, 2020

Exhibit C to
Affidavit of J. Gregory Humphries

ELECTRONICALLY FILED - 2020 Dec 04 3:11 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

https://www.coladaily.com/business/jim-hudson-automotive-acquires-chevrolet-dealership-in-columbia/article_e22bcef8-0853-11eb-b698-4fb37b1abb91.html

FEATURED

Jim Hudson Automotive acquires Chevrolet dealership in Columbia

Karamie Hallman
Oct 7, 2020



Photo from jimhudsonchevy.com

Jim Hudson Automotive Group has just opened a Chevrolet Dealership in Columbia. The family-owned company purchased what was formerly Stiver's Chevrolet and officially opened its doors to customers under the new ownership Tuesday. The dealership is located at exit I-20 and Clemson Road in Columbia.

According to company officials, this is the automotive group's second dealership acquisition for the year after opening Jim Hudson Acura in August, located in Augusta.

The dealership is equipped to provide all Chevrolet Certified vehicle services, as well as offer the area a large selection of both new and certified pre-owned Chevrolet vehicles.

The Jim Hudson Automotive Group has been serving the Midlands since 1980, and has built its brand on a dedication to 100% customer satisfaction in every facet of its business, according to company representatives.

The Group represents nine of the industry's brands: Ford, Toyota, Lexus, Audi, Cadillac, Buick, GMC, Acura and now Chevrolet, as well as a vast selection of used and certified pre-owned vehicles of all makes and models.

More information about the new dealership can be found at jimhudsonchevy.com.

ELECTRONICALLY FILED - 2022 May 12 11:27 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FIFTH JUDICIAL CIRCUIT**
COUNTY OF RICHLAND	)	
	)	C/A NO. 2020-CP-40-01934
STIVERS BROTHERS AUTOMOTIVE, INC.,	)	
	)	
Plaintiff,	)	**PEACOCK AUTOMOTIVE AND W. WARNER PEACOCK'S MOTION FOR PARTIAL SUMMARY JUDGMENT**
v.	)	
	)	
W. WARNER PEACOCK and PEACOCK AUTOMOTIVE, LLC,	)	
	)	
Defendants.	)	

The Defendants, Peacock Automotive, LLC ("Peacock Automotive"), and W. Warner Peacock ("Warner"), by and through their undersigned attorneys and under Rule 56, SCRCP, move the Court for partial summary judgment against the Plaintiff, Stivers Brothers Automotive, Inc. ("Stivers") as follows:

1. Following the termination of the APAs in the present case, Plaintiff sold the Chevrolet dealership to realize a $765,398 economic benefit and made the voluntary and deliberate decision not to resell the Hyundai/Genesis dealerships to Defendants or to any other party. Instead, Plaintiff has continued to operate the Hyundai/Genesis dealerships and has realized substantial net profits of $5,893,886 from their operation up to March 2022, and an increase the value of its franchises of approximately $4 million. The total economic benefit realized by Stivers from the termination of the APAs up to March 2022 is $10,659,284.

2. As a matter of law, there are no issues of material fact regarding recoverable damages and the only issue remaining in the case is whether the Escrow Deposit contained in the original APAs will be returned to Peacock Automotive, LLC, or

paid to the Plaintiff.

3. Plaintiff has filed a cause of action for breach of a contract; Plaintiff must not only prove the contract and its breach, but damages caused by the alleged breach. *Jackson v. Midlands Human Resources Ctr.*, 396 S.C. 526, 528, 374 S.E. 2d 505, 506 (Ct. App. 1988); *Baughman v. Southern Ry. Co.*, 127 S.C. 493, 495, 121 S.E. 356, 356 (1924).

4. Plaintiff has filed a cause of action for tortious interference with contractual relations, whose elements are: "(1) the existence of a contract; (2) knowledge of the contract; (3) intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages." *Eldeco, Inc. v. Charleston Cty. Sch. Dist.*, 372 S.C. 470, 480, 642 S.E.2d 726, 731 (2007). Thus, Plaintiff must prove resulting damages caused by the alleged tortious interference.

5. Plaintiff cannot recover damages it did not incur, particularly where, as here, it has realized a $10+ million financial benefit as a consequence of the termination of the APAs.

6. Plaintiff is only entitled to be placed in the position it would have been in had the contracts been performed. *See Drews Co. v. Ledwith-Wolfe Assocs., Inc.*, 296 S.C. 207, 371 S.E.2d 532 (1988).

7. Plaintiff cannot recover damages for losses that it could have avoided by reasonable efforts. Once it has reason to know the Defendants will not be performing their obligations under the contracts, the non-breaching party is ordinarily expected to stop his own performance to avoid further damages." *Id.*

8. The net profits earned by Plaintiff since the termination of the APAs reduces any

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damages it seeks. See *United States v. City of Twin Falls*, 806 F.2d 862, 873–74 (9th Cir.1986) (contract damages to non-breaching party are reduced by gains after breach because contract damages seek only to "fairly compensate the injured party for his loss"). Plaintiff's net profits realized as a result of retaining the Hyundai/Genesis dealerships, operating the Chevrolet dealership through sale, and selling the Chevrolet dealership to another purchaser in October of 2020, in the total amount of $10,659,284, far exceed the recoverable damages it claims.

9. The remaining damages claimed by Plaintiff were not the proximate result of any alleged breach of the Hyundai/Genesis APA. *U.S. for and on Behalf of Taylor & Polk Const., Inc. v. Mill Valley Const., Inc.*, 29 F.3d 154 (4th Cir. 1994) (Something is proximately caused by a breach of contract if you can say that but for the breach they would not have taken place.)

10. The damages claimed by Plaintiff do not flow as natural consequences of any breach of the Hyundai/Genesis APA.

11. Plaintiff and Defendants agreed in the APAs that indirect, special, and punitive damages are not recoverable.

12. Because Plaintiff has suffered no recoverable damages, partial summary judgment should be granted in favor of the Defendants and the only remaining issue is the allocation of the Escrow Deposit under the APAs.

This Motion is made upon the grounds set forth above and in a Memorandum in Support to be filed prior to the date of the hearing. Defendants additionally give notice that they may rely upon such further briefs and affidavits as may be submitted before the hearing in accordance with the South Carolina Rules of Civil Procedure.

May 12, 2022

Respectfully submitted,

s/Bradford N. Martin
Bradford N. Martin, Esq. (SC Bar No. 3658)
Laura W. H. Teer, Esq. (SC Bar No. 16698)
BRADFORD NEAL MARTIN & ASSOCIATES, PA
Post Office Box 10410
Greenville, South Carolina 29603
864.552.9990
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ATTORNEYS FOR DEFENDANTS
PEACOCK AUTOMOTIVE, LLC AND
W. WARNER PEACOCK

ELECTRONICALLY FILED - 2022 May 12 11:27 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

ELECTRONICALLY FILED - 2022 May 27 4:15 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CASE NO. 2020-CP-40-01934
STIVERS BROTHERS AUTOMOTIVE, INC., Plaintiff, v. W. WARNER PEACOCK and PEACOCK AUTOMOTIVE, LLC, Defendants.	)	**RETURN TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

INTRODUCTION

On May 12, 2022, the Defendants filed Peacock Automotive And W. Warner Peacock's Motion For Partial Summary Judgment. Therein, the Defendants assert that the Plaintiff has suffered no recoverable damages and the only remaining issue is the allocation of the Escrow Deposit under the APAs. This is a subsequent motion upon the same facts prohibited by Rule 43(l), SCRCP and should be summarily denied.

BACKGROUND

On December 4, 2020, the Defendants filed Peacock Automotive And Warner Peacock's Motion And Memorandum For Summary Judgment. Therein, the Defendants asserted, *inter alia*, that the Plaintiff had failed to prove or to mitigate damages.

The Defendants' first motion for summary judgment was heard by the Honorable Jocelyn Newman on March 23, 2021. Judge Newman denied the Defendants' motion in a Form 4 Order dated March 24, 2021. Attached hereto and incorporated herein by reference as Exhibit A is a copy of Judge Newman's Order.

ELECTRONICALLY FILED - 2022 May 27 4:15 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

LAW

Rule 43(l), SCRCP provides:

> If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same state of facts shall be made to any other judge in that action.

ARGUMENT

There is no distinction between a subsequent motion upon the same state of facts and a subsequent motion upon subsequently discovered but irrelevant and inadmissible facts.

As set forth in *Jackson v. Midlands Human Resources Ctr*, 296 S.C. 526, 528, 374 S.E.2d 505, 506 (Ct. App. 1988) cited in the Defendants' first and second motions, the proper measure of damages is the difference between the contract price and either (1) the fair market value on the date of the breach or (2) the price obtained on a subsequent sale. See also *D.G. Porter, Inc. v. Fridley*, 42 UCC Rep. Serv. 1823, 373 N.W.2d 917 (1985), *Wickman v. Opper*, 10 Cal. Rptr. 291, 188 Cal. App.2d 129 (1961); *Perry v. Hansen*, 120 Ariz. 266, 585 P.2d 574 (1978); and *Redmond v. Prosper, Inc.*, 364 So.2d 812 (1978).

It is undisputed that Stivers retained its Hyundai assets. Thus, Stivers' damages are measured by the difference between the price, which is not in dispute, and the fair market value on the date of the breach. The fair market value on the date of the breach has not changed.

CONCLUSION

The filing of a subsequent motion upon the same state of facts violates Rule 43(l), SCRCP. Based upon the foregoing, the Defendants' new motion for summary judgment should be summarily denied.

Signatures on following page.

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STUDEMEYER LAW FIRM, P.C.

/s/ J. Gregory Studemeyer
J. Gregory Studemeyer
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Post Office Box 1014
Irmo, South Carolina 29063
803-393-4399
SC Bar #5416

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DOUGLAS JENNINGS LAW FIRM, LLC

/s/ J. Michael Baxley
J. Michael Baxley
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Attorneys for Plaintiff

ELECTRONICALLY FILED - 2022 May 27 4:15 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934
ELECTRONICALLY FILED - 2021 Mar 24 1:07 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP4001934

Stivers Brothers Automotive Inc
PLAINTIFF(S)

W Warner Peacock et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Following a hearing on March 23, 2021, conducted via Cisco WebEx,

Plaintiff's Motion for Judgment on the Pleadings (filed on 2/5/21) is DENIED.

Defendants' Motion for Judgment on the Pleadings (filed on 12/9/20) is DENIED.

Defendants' Motion to Seal (filed on 12/4/20) is GRANTED, and the two Asset Purchase Agreements in question shall be subject to a confidentiality order which is to be entered by the Court.

Defendants' Motion for Summary Judgment (filed on 12/4/20) contains numerous arguments. The motion is DENIED as to Plaintiff's alleged failure to prove or to mitigate damages. The remainder of the motion is TAKEN UNDER ADVISEMENT.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/24/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CASE NO. 2020-CP-40-01934
	)	
STIVERS BROTHERS AUTOMOTIVE, INC.,	)	
	)	
Plaintiff,	)	**MOTION FOR SUMMARY JUDGMENT ON DECLARATORY JUDGMENT CLAIM**
	)	
v.	)	
	)	
W. WARNER PEACOCK and PEACOCK AUTMOTIVE, LLC,	)	
	)	
Defendants.	)	

TO: BRADFORD N. MARTIN, ESQ., ATTORNEY FOR DEFENDANTS:

PLEASE TAKE NOTICE that the Plaintiff will move before the presiding judge of the Court of Common Pleas for the Fifth Judicial Circuit, at the Richland County Judicial Center, at 10:00 A.M. on the tenth (10th) day after service hereof, or at such other time and place as is convenient to the Court and counsel for summary judgment on declaratory judgment pursuant to Rules 56 and 57, SCRCP. This motion will be based upon the pleadings, affidavits, the South Carolina Rules of Civil Procedure, such other and further case and statutory law as may be appropriate, and the supporting memorandum submitted herewith.

STUDEMEYER LAW FIRM, P.C.
By: s/J. Gregory Studemeyer
J. Gregory Studemeyer
SC Bar #5416
7478 Carlisle Street
Post Office Box 1014
Irmo, South Carolina 29063
803-393-4399

DOUGLAS JENNINGS LAW FIRM, LLC
/s/ J. Michael Baxley
J. Michael Baxley
S.C. Bar # 591
225 Seven Farms Drive, Suite 202
Charleston, SC 29492
(843) 408-0070
Attorneys for the Plaintiff

Irmo, South Carolina
March 21, 2023

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CASE NO. 2020-CP-40-01934
	)	
STIVERS BROTHERS AUTOMOTIVE, INC.,	)	
	)	**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S DECLARATORY JUDGMENT CLAIM**
Plaintiff,	)	
	)	
v.	)	
	)	
W. WARNER PEACOCK and PEACOCK AUTMOTIVE, LLC,	)	
	)	
Defendants.	)	
	)	

INTRODUCTION

This litigation arises from Defendants' default on the purchase from Plaintiff of two automobile dealerships in the Columbia area. Plaintiff moves this Court to declare the rights, status, and other legal relations of the parties to this case pursuant to Rules 56 and 57, SCRCP, and the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10 *et seq*. Based on the evidence in the record, Plaintiff respectfully argues this Court should find, as a matter of law (1) the Chevrolet Asset Purchase and Sale Agreement ("APA") is ambiguous with regard to the damages recoverable for its breach; (2) the Hyundai APA is not ambiguous with regard to the damages recoverable for its breach; and, (3) the appropriate measure of damages associated with Defendants' breach of the APAs is the difference between the contract price and the fair market value of the assets listed in the APAs at the time of the breach.

UNIFORM DECLARATORY JUDGMENTS ACT

The Uniform Declaratory Judgments Act is a "remedial" act, the purpose of which is to "settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations. It is to be liberally construed and administered." S.C. Code Ann. § 15-53-130. To this end, S.C. Code Ann. § 15-53-20 provides

> Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree.

S.C. Code Ann. § 15-53-30 further provides

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> Any person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

Finally, S.C. Code Ann. § 15-53-40 provides

> A contract may be construed either before or after there has been a breach thereof.

RECOVERABLE DAMAGES

i) The terms of the Chevrolet APA are ambiguous as to recoverable damages.

The APAs in this case are not mirror images of one another; some terms present in the Chevrolet APA are entirely absent from the Hyundai APA. The Chevrolet APA begins with a series of recitations indicating that the Chevrolet APA is one facet of a two-part transaction:

> Whereas, Seller is also the owner and operator of [a] Hyundai brand automobile dealership with accompanying service facilities (collectively, the "Related Dealership") under franchise from Hyundai Motor America (the "Related Manufacturer"), located at the Premises; and
>
> Whereas, Seller has also agreed to sell and Buyer has also agreed to purchase certain of the assets owned by Seller and used in the conduct of the Related Dealership; and
>
> Whereas, simultaneously herewith the parties are entering into a separate document that sets forth the terms and conditions upon which Seller has agreed to sell to Buyer and Buyer has agreed to purchase and pay for said Related Dealership assets ("Hyundai APA"); and
>
> Whereas, it [is] the desire of the parties that the separate transactions described above be consummated simultaneously with each other.

Chevrolet APA, p. 1 – 2.

These recitations are mirrored in the Hyundai APA. Hyundai APA, p. 1 – 2. § 20(g) of the Chevrolet APA memorializes substantially the same sentiment as is present in the introduction:

> "This Agreement represents one facet of a two-part transaction. The other facet is described as the Hyundai APA. The Hyundai APA and this Agreement are referred to herein as the 'Transaction Agreements.' The closing of this Agreement is contingent upon the closing of all the Transaction Agreements, it being contemplated that such closings shall occur simultaneously."

Chevrolet APA § 20(g), p. 21.

No analogous section is present in the Hyundai APA. However, both APAs contain identical escrow provisions, designated § 20(A) in both the Chevrolet APA and the Hyundai APA:

> "Upon seller's execution and redelivery [sic] of this Agreement, Buyer will promptly deposit the sum of ONE HUNDRED THOUSAND DOLLARS ($100,000.00) as an escrow deposit (the "Escrow Deposit") with Shutts & Bowen, LLP (the "Escrow Agent") to be held in an interest bearing account and thereafter disbursed as hereinafter described, with all interest thereon credited to Buyer."

Chevrolet APA § 20(A), p. 20; Hyundai APA § 20(A), p. 20.

The Chevrolet APA then proceeds to address damages in §§ 20(d-h). None of these sections are present in the Hyundai APA. § 20(d) of the Chevrolet APA provides that

> In the event that Buyer defaults upon the terms of *this* Agreement, without there being fault or failure to perform by Seller, the Escrow Deposit shall be forfeited to Seller as liquidated damages, and *Seller shall have no further claim against Buyer.*

Chevrolet APA § 20(d), p. 20. [emphasis added].

Chevrolet APA § 20(d), then, limits damages for the buyer's breach to the Escrow Deposit. However, Chevrolet APA § 20(e) provides

> In the event of the failure of either party to perform the obligations imposed upon it, the other party hereto shall be entitled to specific performance of the provision or provisions breached (*together with any other remedies at law or equity*) as provided in Section 24(l) below.

Chevrolet APA § 20(e), p. 20. [emphasis added].

Chevrolet APA § 20(e) thus provides that upon a breach by the Buyer, the Seller is entitled to specific performance "together with any other remedies at law or equity" that may be available to it. Chevrolet APA § 24(l)(1) is even more explicit on the expansive nature of damages available under the APA. That section expressly rejects *any* limitation of damages available to the parties related to the other party's breach:

> The parties hereto expressly recognize and agree that the transactions described in this Agreement are unique and that the payment of monetary damages alone may not be [*sic*] adequate remedy to a party for a breach of this Agreement by the other party; and that, as such, a party's remedies in case of default or failure to perform by the other party shall include the right to enforce this Agreement by specific performance. *The foregoing shall not, however, limit any other rights or remedies available to either party arising from any breach by the other party;* and any demand by one party for specific performance shall not constitute an election of remedies.

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Chevrolet APA § 24(l)(1), p. 26. [emphasis added].

Thus, while the Chevrolet APA § 20(d) states that the Seller's damages in the event of the Buyer's breach are limited to the Buyer's Escrow Deposit, §20(e) states that the Seller is entitled to specific performance "together with any other remedies at law or equity" and § 24(l)(1) explicitly declares that the APA does not "limit any other rights or remedies available to either party arising from any breach by the other party." Therefore, the extent to which the Chevrolet APA limits damages for willful breach is ambiguous.

ii) The terms of the Hyundai APA are not ambiguous as to recoverable damages.

Given that § 20(d) of the Chevrolet APA, which purports to limit recoverable damages for that agreement, is absent from the Hyundai APA, and given that § 24(l) is exactly the same in the Hyundai APA as it is in the Chevrolet APA, the Hyundai APA does not even purport to limit damages available to the Seller for the buyer's breach. Thus, there is no ambiguity as to the damages available to the Seller under the Hyundai APA.

iii) Because Defendants admit they drafted the APAs, all ambiguities regarding damages are to be construed against Defendants.

Peacock Automotive LLC member Greg Humphries drafted the APAs, and it is well settled that "a court will construe any doubts and ambiguities in an agreement against the drafter of the agreement." *Mathis v. Brown & Brown of South Carolina, Inc.,* 389 S.C. 299, 309, 698 S.E.2d. 773, 778 (2010).[1]

Given that a plain language reading of the provisions on damages in the Chevrolet APA appears to result in contradictions and a reading of the same provisions in the Hyundai APA does not, the Court should find, as a matter of law, that the Chevrolet APAs is ambiguous with regard to the damages recoverable for its breach, but the Hyundai APA is not ambiguous with regard to the damages recoverable for its breach.

MEASURE OF DAMAGES

South Carolina law is clear the appropriate measure of damages associated with Defendants' breach of the APAs is the difference between the contract price and the fair market value of the assets listed in the APAs on the date of the breach. This "market measure" of damages

> allows the breach victim to recover the market value of the very performance he should have had, less the contract price… [w]hen the tables are turned and the buyer commits a total breach, the same principle applies to the seller's damages claims, but the seller shows damages by showing that the contract price is greater than the market value on the relevant date. Market measures

[1] In an affidavit filed on December 4, 2020 along with Defendants' Motion and Memorandum for Summary Judgment, Humphries swore that he "was tasked with preparing contracts for the purchase and sale of two Columbia, South Carolina dealerships owned by Stivers (Chevrolet and Hyundai/Genesis)." Humphries Aff., ¶ 4. Dec. 4, 2020.

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> are applied in chattel sales contracts (subject to some special rules of the U.C.C.), real estate sales, *and to analogous single-shot market transactions.*

Dan B. Dobbs, Dobbs Law of Remedies § 12.2 (2) (3d ed. 2018). [emphasis added].

i) The market measure of damages has been applied in breach of contract actions in South Carolina for more than 100 years.

In *Huguenot Mills v. George F. Jempson & Co.*, a case involving a breach of contract for the sale of commercial goods, 68 S.C. 363, 47 S.E. 687 (1904), the South Carolina Supreme Court held

> Where the exact time for delivery is to be afterward fixed by the purchasers, the measure of damages is the difference between the contract price and the fair market value at the date of refusal to receive; for such refusal necessarily implies a refusal to fix a time and there is then a complete breach of the contract.

Likewise, in *Swift & Co. v. Goldberg*, 121 S.C. 190, 113 S.E. 358 (1922), another case involving a breach of contract for the sale of commercial goods, the Supreme Court of South Carolina, affirming the trial court's judgment, quoted the trial court as charging the jury with the following:

> In order to ascertain the measure of damages, because the law has a measure in this state, and that measure is the difference between the contract price and the reasonable market value at the time and place of the breach of the contract. *That difference the law presumes will reasonably compensate in cases of this kind.*

[emphasis added].

In addition to cases involving chattel sales contracts, this measure of damages has also been applied in cases involving real estate sales, including *Jackson v. Midlands Human Resources Center*, 296 S.C. 525, 374 S.E.2d 526 (Ct. App. 1988), a case cited in Defendants' first and second motions for summary judgment.[2]

[2] *See also Ackerman v. McMillan*, 324 S.C. 440, 477 S.E.2d 267 (Ct. App. 1996) ("The McMillans also concede that the proper measure of damages in this case is the difference between the contract price and the fair market value of the property at time of breach."); *Bannon v. Knauss*, 282 S.C. 589, 320 S.E.2d 470 (Ct.App.1984) ("In an action for breach of a contract to purchase real estate, general damages may be measured by the difference between the contract price and the fair market value of the property at the time of the breach."); *Benya v. Gambel*, 282 S.C. 624, 321 S.E.2d 57 (Ct. App. 1984) ("Generally, the measure of damages for breach of an executory contract to purchase land is the difference between the contract price and the market value of the property at the time of the breach.").

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While case law on breach of executory contracts for the sale of a business is limited in South Carolina,[3] courts in other jurisdictions have likewise held that that the proper measure of damages for the breach of an executory contract to sell a business, "an analogous single-shot market transaction," is the difference between the contract price and the fair market value on the date of the breach.

ii) Because the sale of a business is a "single-shot market transaction," the market measure of damages is the appropriate measure of damages in cases of breach of contract for the sale of a business.

In *Turner Broadcasting System, Inc. v. McDavid*, 303 Ga. App. 593, 693 S.E.2d 873 (Ct. App. Ga. 2010), Turner Broadcasting Systems, Inc. ("Turner") breached an oral agreement to sell the Atlanta Hawks basketball franchise, the Atlanta Thrashers hockey franchise, and the operating rights to Philips Arena to David McDavid ("McDavid") for approximately $96,000,000. Notably, the agreement *did not* include the transfer of ownership of real estate; the Atlanta Fulton County Recreation Authority owned, and continues to own, Philips Arena, so Turner could transfer only the right to operate the premises. *Id.* at 594, 693 S.E.2d at 874.

The parties began negotiations in November 2002, and in August of 2003, Turner's corporate board of directors approved the sale of the assets to McDavid. *Id.* at 594-95, 693 S.E.2d at 876. Two members of the board, however, expressed concerns that the assets had been undervalued and, apparently, arranged for Turner to begin negotiations with an alternative buyer. *Id.* at 595, 693 S.E.2d at 877. In September 2003, as McDavid was preparing to travel to Atlanta for the closing and a press conference to announce the sale, Turner informed him that it "was going in another direction" and had instead sold the assets to another ownership group. *Id.* McDavid brought suit for breach of contract, amongst other causes of action. *Id.*

At trial,

> The jury was instructed that the proper measure of damages in this case was "the difference between the contract price and the fair market value of the [assets] at the time the contract was breached." The trial court further defined fair market value as "the price that [the asset] will bring when it is offered for sale by one who desires but is not obliged to sell it and is bought by one who wishes to buy but is not under a necessity to do so."

Id. at 609-10, 693 S.E.2d 886.

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[3] Former Chief Justice Jean Toal recognized this paucity of commercial case law in a 2004 article for the South Carolina Law Review, writing, "Unlike Delaware's rich corporate common law tradition, however, South Carolina's common law contains few judicial opinions that address corporate and commercial law issues." Toal, Jean H. and Riley, W. B. (2004) "Fiduciary Duties of Partners and Limited Liability Company Members Under South Carolina Law: A Perspective from the Bench," *South Carolina Law Review*: Vol. 56: Iss. 2, Article 4. Delaware courts have, incidentally, applied the market measure of damages to a breach of contract for the sale of a business. See *Cobalt Operating, LLC v. James Crystal Enters., LLC*, 2007 WL 2142926, at *4 (Del. Ch. July 20, 2007) (citations omitted), aff'd, 945 A.2d 594 (Del. 2008).

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The jury instruction on measure of damages was well-supported by precedent; the market measure of damages has been applied to breaches of contract for the sale of a business in Georgia since at least 1948. *See Anagnostis v. Alexandrou*, 77 Ga.App. 742, 49 S.E.2d 774 (1948). After the jury returned a verdict for $281,000,000.00 for McDavid (representing a fair market value of approximately $377,000,000 for the assets at the time of breach),[4] Turner appealed, contending, amongst other things, that the court had erred in failing to give its requested jury charges. Turner's request to charge no. 56 read, in pertinent part,

> Under each of Plaintiffs' claims, they seek as damages the difference between the allegedly agreed contract price for the teams and arena rights and the fair market value of the teams and arena rights. Before you can award Plaintiffs this measure of damages, you must find that Plaintiffs have proved, by a preponderance of the evidence, that the NBA and NHL would have approved the transfer of the teams and arena to Plaintiffs.

Id. at 608, 693 S.E.2d 885.

The trial court declined to charge the jury as requested by Turner, and the Court of Appeals affirmed the trial court's decision, holding that the second sentence of the proposed jury charge incorrectly attempted to shift the burden of proof. However, the court found no fault with the jury instruction as to the measure of damages, and the Court of Appeals concluded

> In this case, Turner makes a compelling argument that the damages award seems disproportionate to the extent that it awarded McDavid more than he would have paid for the assets if the contract had not been breached. *Nevertheless, Turner does not dispute that the measure of damages required the jury to determine the fair market value of the assets at the time of the breach.* The trial evidence conflicted significantly as to whether the fair market value of the assets exceeded or was equivalent to the contract price, thereby presenting a question of fact for the jury's resolution in rendering its damages award.

Id. at 612, 693 S.E.2d at 888. [emphasis added].

The $281,000,000 award of damages that McDavid received at trial, then, was not modified in any way by the Court of Appeals, even though McDavid neither operated the franchises nor took possession of Philips Arena.

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[4] In an article published after the jury verdict was delivered, McDavid acknowledged the significant gap between contract price and the fair market value of the assets, saying, "We don't deny we negotiated long and hard and what was probably the deal of the century. We knew we had several hundred million dollars made as soon as we signed the deal." John Manasso, "McDavid wins $281M in case against Turner," ATLANTA BUSINESS CHRONICLE (Dec. 9, 2008), https://www.bizjournals.com/atlanta/stories/2008/12/08/daily39.html.

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iii) When a buyer breaches a contract for the sale of a business, the seller is not obligated to sell to a third party to recover damages resulting from the buyer's breach.

While the buyer received the difference between contract price and fair market value following a breach by the seller in *Turner Broadcasting Systems*, in *D.G. Porter, Inc. v. Fridley*, 373 N.W.2d 917, 41 UCC Rep.Serv. 1823 (1985), the Supreme Court of North Dakota addressed the opposite circumstance.

In that case, Fridley agreed to purchase a bar from Porter for $250,000, with $50,000 due on closing date and the balance due in four subsequent annual installments of $50,000. *Id.* at 919. The parties executed an agreement on December 5, 1983, and Fridley assumed possession of the bar the same day. *Id.* However, "On February 20, 1984, Fridley sent Porter a notice of his intent to rescind the purchase agreement. At that time no closing had occurred, and Fridley had not paid the $50,000 down payment." *Id.*

In assessing the damages suffered by Porter, the Supreme Court of North Dakota noted

> The general rule is that the seller's remedy for the buyer's breach of an executory contract to purchase an ongoing business is to recover damages for the difference between the contract price and the fair market value of the business on the date of the breach.

Id. at 924.

In addition, the court explicitly addressed Porter's retention of the bar as a component of full and fair compensation for Fridley's breach, writing,

> By this remedy, Porter will receive the equivalent of what he bargained for under the agreement: *in addition to retaining the business* he will receive an amount equal to the difference between the contract price of $250,000 and the value of the business on the date of Fridley's breach.

Id. at 925. [emphasis added].

The Supreme Court of North Dakota, then, determined that Porter had no obligation to attempt to sell the bar to a third party in order to fully recover for Fridley's breach. Other jurisdictions around the United States have come to the same conclusion.

In *Turner v. Shalberg*, 70 S.W.3d 653 (2002), the Missouri Court of Appeals addressed the measure of damages associated with a breach of contract for the sale of a billiards hall. In that case, Turner opened Buster's Billiards ("Buster's") in a leased building in 1995. *Id.* at 655. Turner sold Buster's to Brent Geraughty ("Geraughty") in October 1996 for $79,675. *Id.* at 656. Geraughty paid Turner $6,500 up front and executed two promissory notes for the remainder, agreeing to pay $1,100 monthly beginning in December 1996. *Id.* However, after Geraughty stopped making payments on the note in May 1997, Turner sought out a buyer for Buster's upon Geraughty's default. *Id.*

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Shalberg offered to buy Buster's after Geraughty defaulted, and the parties executed a contract in the amount of $41,500 on June 26, 1997. *Id.* The contract provided only for the sale of the "business, inventory, equipment and name," not the real estate on which Buster's was operated. *Id.* The closing was set for July 31, 1997. *Id.* The parties agreed to let Geraughty continue to operate Buster's until the closing date in order to retain the bar's customer base. *Id.*

On or about July 28, 1997, Turner called Shalberg to discuss the closing. *Id.* By this point, Turner had removed Geraughty from the building, and Turner no longer had an active lease agreement, liquor license, or business license for Buster's; Geraughty had obtained each of these separately, and Shalberg was to do the same under their agreement. *Id.* at 657. During this conversation, Shalberg informed Turner that he had no intention of closing the sale. *Id.* Rather than attempt to sell Buster's to another buyer, Turner liquidated the equipment associated with Buster's on August 15, 1997. *Id.* He did not recover enough from the sale of the equipment to satisfy the remaining debt on his business loan. *Id.* Turner filed suit against Shalberg for breach of contract on January 12, 1998, and after a bench trial, was awarded $28,500 in actual damages and $6,700 in attorneys' fees and legal expenses. *Id.*

On appeal, Shalberg did not argue that he did not breach the contract; instead, he argued that Turner suffered no damages from the breach. *Id.* at 658. The Court of Appeals acknowledged that for the seller to recover damages for the buyer's breach of contract, "he must show that the contract price exceeds the fair market value of the property being sold on the relevant date." *Id.* Shalberg argued that "the contract sought to sell the business as a going concern, so that the contract price is the only evidence of the fair market value of the business." *Id.* He further argued that Turner should have reopened Buster's or, alternatively, found another buyer for Buster's to mitigate his damages.

The Court of Appeals rejected both of Shalberg's arguments. In affirming the trial court's award of damages to Turner, the Court of Appeals noted

> While Turner had a duty to mitigate his damages, that duty did not arise until he learned of the breach. *A.G. Edwards & Sons, inc. v. Drew*, 978 S.W.2d 386, 391 (Mo. App. 1998). He was not required to take that action, which, "upon [afterthought]," would have been more advantageous to him. *Id.* Because Turner did not have business or liquor licenses for Buster's, he was unable to reopen the business himself to keep the business running until he found another buyer. Shalberg knew that the continuity of Buster's depended on him quickly taking over the business from Geraughty. By breaching that contract, it was Shalberg, not Turner, who caused the business to fail.

Id. at 659.

The court in *Turner* thus recognized that in the case of a breach of contract for the sale of a business, the seller is not required to attempt a subsequent sale of the business in order to mitigate his damages.

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iv) Because the breaching party does not have the benefit of hindsight at the moment of breach, it cannot claim the benefit of hindsight with regard to the measure of damages.

The reason that jurisdictions around the United States have settled on the market measure of damages for cases involving a breach of contract for the sale of a business is because it fairly limits damages to what was known and reasonably anticipated at the time of breach. It would be patently unfair to allow either the breaching or non-breaching party to pick an arbitrary date, remote from the date of breach, at which to measure damages.

In *Sharma v. Skaarup Ship Management Corp.*, 916 F.2d 820 (2nd Cir. 1990), a case concerning the breach of contract for the sale of tanker ships, the United States Second Circuit Court of Appeals emphasized the basic fairness of the market measure of damages, writing, "*It is a fundamental proposition of contract law*, including that of New York, that the loss caused by a breach is determined as of the time of breach." *Id.* (citing *Simon v. Electrospace Corp.*, 28 N.Y.2d 136, 145, 269 N.E.2d 21, 26, 320 N.Y.S.2d 225, 232 (1971)). "It is also fundamental that, where the breach involves the deprivation of an item with a determinable market value, the market value at the time of the breach is the measure of damages." *Id.* The court in *Sharma* emphatically rejected the "wait-and-see" approach to damages,, writing,

> *Measuring contract damages by the value of the item at the time of the breach is eminently sensible* and actually takes expected lost future profits into account… To be sure, uncertainties about the future and lack of perfect information may cause an asset to be under or over-valued at any particular time. At that time, however, either party has an opportunity to hedge according to his or her judgment about the future stream of income. New York courts have thus *explicitly* upheld damage awards based on "what knowledgeable investors anticipated the future conditions and performance would be at the time of the breach" and have *rejected awards based on what "the actual economic conditions and performance" were in light of hindsight. Aroneck v. Atkin*, 90 A.D.2d 966, 967, 456 N.Y.S.2d 558, 559 (App.Div. 4th Dep't 1982).

Id. at 826. [emphasis added].

Put differently, the breaching party is neither entitled to the potential benefits nor subject to the potential detriments of post-breach changes in market conditions. See *CR-RSC Tower I, LLC v. RSC Tower I, LLC*, 429 Md. 387, 56 A.3d 170 (Ct. App. MD 2012). A host of other jurisdictions

and legal scholars have arrived at the same conclusion when dealing with breach of contract for the sale of a business.[5] [6]

In this case, Plaintiff alleges Defendants breached an executory contract for the sale of its dealerships. As in *Turner*, Defendants never took possession of the dealerships. As in *Turner Broadcasting Systems* and *Turner*, no real estate was to be transferred.

Plaintiff notes that Defendants' breach mirrored moves made simultaneously by larger, more sophisticated players within the automotive dealership industry.[7] On March 27, 2020, the market value of the dealerships, while either difficult or impossible to calculate with perfect certainty, was substantially less than the amount that Defendants had agreed to pay for them months before.

Defendants have argued against the market value measure of damages and, instead, have cited *United States v. City of Twin Falls*, 806 F.2d 862, 2 UCC Rep.Serv.2d 1324 (9th Cir. 1986)

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[5] *See also Peery v. Hansen*, 120 Ariz. 266, 585 P.2d 574 (Ct. App. Ariz. 1978) (holding the proper measure of the vendor's damages upon the purchaser's breach of contract is the difference between the purchase price and the fair market value at the time of the breach); *Redmond v. Prosper*, 364 So. 2d 812 (Fla. Dist. Ct. App. 1978) (holding the proper measure of damages is the excess of the contract sales price over the market value as of the time of the breach, less the amount previously paid); *Wickman v. Opper*, 188 Cal. App.2d 129 (Cal. 1961) (holding where the buyer of a business repudiated the contract to purchase, the seller was entitled to recover the difference between the contract price and the market price at the time of breach).

[6] "[T]he general rule is where the buyer repudiates an executory contract of sale, or wrongfully refuses to accept the property thereunder, the seller's measure of damages is the difference between the contract price and the market value at the time and place of delivery. To this rule, however, there are exceptions where required to afford to the seller indemnification for the loss ascribable approximately to the buyer's breach. **One very general exception is to base the damages upon the market value of the property at the time of the breach, rather than at the time of delivery. Such exceptions may be essential where, as here-after pointed out, either by the terms of the contract or the subsequent agreement of the parties, the time for delivery is indefinite, or depends upon some affirmative act of the buyer.**" 44 A.L.R. 215. [emphasis added].

[7] On March 16, 2020, Asbury Automotive Group ("Asbury"), a publicly-traded automotive group based out of Duluth, Georgia which, at the time, owned more than 80 dealerships, filed a Form 8-K with the Securities Exchange Commission in which it addressed the COVID-19 pandemic's impact on its December 12, 2019 agreement to purchase 17 new vehicle franchises from the Park Place Dealership family of entities ("Park Place") for approximately $1,000,000,000. In its filing, Asbury noted "the COVID-19 outbreak in the United States remains in its early stages, and we cannot predict the potential future effects of the outbreak on the Company's business or its prospects. In light of these developments, the Company and its board of directors intends to continue to evaluate its alternatives with respect to the previously announced acquisition of substantially all of the assets of the business of the Park Place Dealership family of entities ('Park Place') under the terms of the Asset Purchase Agreement, dated as of December 11, 2019, among the Company, Park Place and the other parties thereto." Asbury Automotive Group, Inc., Current Report (Form 8-K) (March 16, 2020).
On March 25, 2020, Asbury filed a second Form 8-K, stating, "On March 24, 2020, the Purchaser delivered notice to the sellers terminating the Transaction Agreements pursuant to the terms thereof in exchange for the payment of $10.0 million of liquidated damages. In addition to $1.7 million in transaction related expenses recorded in 2019, the Company expects to incur approximately $5.7 million of fees, accrued interest and other expenses during the first quarter of 2020 in connection with the termination of the Transaction Agreements." In this same filing, Asbury also noted it had "increased its borrowing as a precautionary measure in order to increase its cash position and preserve financial flexibility in light of current uncertainty in the global markets resulting from the COVID-19 outbreak." Asbury Automotive Group, Inc., Current Report (Form 8-K) (March 25, 2020).

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to stand for the proposition that "contract damages to [a] non-breaching party are reduced by gains after breach because contract damages seek only to 'fairly compensate the injured party for his loss.'" However, this case offers no support for this position.

In *City of Twin Falls*, the city of Twin Falls, Idaho ("Twin Falls") needed a secondary waste treatment facility plant to comply with federal water pollution discharge standards. *Id.* at 865. Twin Falls solicited bids for the manufacture and installation of secondary treatment equipment and required bidders to guarantee that, if selected, they would meet certain water quality specifications. *Id.* Envirotech Corporation ("Envirotech") won the bid for supplying and installing the secondary treatment equipment, but, upon installation, problems immediately emerged, and the system never performed as intended. *Id.*

The United States, on behalf of the Environmental Protection Agency, then sued Twin Falls for violation of federal water pollution statutes. *Id.* Twins Falls, in turn, filed a third-party indemnity action against Envirotech and other firms involved in the design and construction of the sewage treatment plant. *Id.* The United States prevailed, and Twin Falls obtained a jury verdict on its breach of contract and warranties action claims against Envirotech. *Id.* at 866. On appeal, the court considered "whether Idaho courts would apply the collateral source rule to preclude offsetting remedial grants or benefits provided by the government from the amount of damages for breach of contract." *Id.* at 873. In holding that the collateral source rule does not apply in breach of contract cases, the court acknowledged that in actions for breach of contract, "only such damages will be allowed as fairly compensate the injured party for his loss." *Id.* at 874. The court in *City of Twin Falls* made no mention whatsoever of a non-breaching party's "gains after breach," and, consequently, it offered no opinion as to their relationship to the proper measure of damages in an action for breach of contract for the sale of a business.

Therefore, based upon the relevant case law and legal authorities, the appropriate measure of damages associated with Defendants' breach of the APAs is the difference between the contract price and the fair market value of the assets listed in the APAs on the date of the breach.

CONCLUSION

Based upon the foregoing, Plaintiff respectfully urges the Court to hold the Chevrolet APA is ambiguous with regard to the damages recoverable for its breach, but the Hyundai APA is not ambiguous with regard to the damages recoverable for its breach; and that the appropriate measure of damages associated with Defendants' breach of the APAs is the difference between the contract price and the fair market value of the assets listed in the APAs at the time of the breach.

SIGNATURE PAGE FOLLOWS

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March 21, 2023

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FIFTH JUDICIAL CIRCUIT**
COUNTY OF RICHLAND	)	
	)	C/A NO. 2020-CP-40-01934
STIVERS BROTHERS AUTOMOTIVE, INC.,	)	
	)	**PEACOCK AUTOMOTIVE AND**
Plaintiff,	)	**WARNER PEACOCK'S**
v.	)	**MEMORANDUM IN OPPOSITION TO**
	)	**PLAINTIFF'S MARCH 21, 2023**
W. WARNER PEACOCK and PEACOCK AUTOMOTIVE, LLC,	)	**MOTION FOR SUMMARY**
	)	**JUDGMENT**
Defendants.	)	

INTRODUCTION

Stivers' arguments misconstrue the facts of this case. They misrepresent the APAs, present only a portion of the relevant law, and rely on non-controlling cases.

These parties are very sophisticated and successful dealers. Each had bought and sold dealerships prior to entering into the APAs for Stivers' Columbia dealerships. Each hired sophisticated counsel to represent them in the transactions and those counsel equally were involved in preparing the APAs.[1] (Affidavit of Stivers' attorney Richard L. McBride, Jr., Ex. A; Affidavit of Peacock's attorney Gregory Humphries, Ex. B).

The parties agreed in writing that in case of a breach the following remedies would be available: (1) specific performance; (2) the Escrow Deposit; and (3) injunctive relief for specified breaches. The APAs consistently reflected that while the parties were not restricted as to the rights or remedies available, i.e. the causes of action they may allege, their damages were capped as agreed in the contracts.

[1] There were two APAs for three dealerships: the Chevrolet APA, and the Hyundai/Genesis APA (hereinafter referred to as the "Hyundai APA").

Finally, Stivers ignores the doctrine of mitigation when it comes to the Hyundai/Genesis dealerships. Curiously, it applies the doctrine when admitting it mitigated its damages as to the Chevrolet store (by selling the dealership to a third party for more than the Peacock APA price) but ignores it for the Hyundai/Genesis stores. Stivers chose not to sell the Hyundai/Genesis stores, which bars it from recovering any damages that could have been avoided. If Stivers claims it mitigated by continuing to operate the Hyundai/Genesis dealerships, the profits it realized and increase in the value of the dealerships reduce its alleged damages to zero.

I. STIVERS MISSTATES THE RELATIONSHIP BETWEEN THE HYUNDAI AND CHEVROLET APAS

Stivers misrepresents in its Memorandum three times that §20(a) of the Chevrolet and Hyundai APAs are identical. The first way is boldly stating the Escrow provisions are "identical." (Stivers' Memorandum, p. 3). The second is misquoting the Escrow provision of the Hyundai APA (*Id.*). The third is by citing the misrepresented Section as "Hyundai APA § 20(A)" [sic] and at the wrong page (p. 20, not p. 19). *Id.* The correct Hyundai APA citation is as follows:

> (a) Upon Seller's execution and redelivery of this Agreement, Buyer will promptly **deliver, as detailed under the Chevrolet APA**, the sum of ONE HUNDRED THOUSAND DOLLARS ($100,000) as an escrow deposit (the "Escrow Deposit") with Shutts & Bowen, LLP (the "Escrow Agent") to be held in **escrow and disbursed by Escrow Agent in accordance with the Chevrolet APA. The Deposit shall serve as an earnest money deposit for both Transaction Agreements (as hereinafter defined). Upon the simultaneous closing of this the transactions contemplated in the Transaction Agreements, the escrow deposit shall be applied to the purchase price of the Related Dealership as set forth in the Chevrolet APA.**
>
> (Emphasis added, showing portions of the Hyundai APA §20 (a) omitted by Stivers).

Stivers entirely disregards the language incorporating the provisions of the Chevrolet APA, including Section 20(d) of the Chevrolet APA. This language is significant as it incorporates the very cap on damages Stivers contends is absent. This defeats its whole argument.

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The Chevrolet and Hyundai APAs reference each other and contemplate simultaneous transactions. Under South Carolina law, these agreements are read together. "The general rule is that, in the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the Court will consider and construe them together." *Harris v. Ideal Solutions, Inc*., 385 S.C. 74, 79, 682 S.E.2d 523, 526 (Ct. App. 2009). The correct comparison of the paragraphs defeats Stivers' argument: the Chevrolet APA is not ambiguous, nor is the Hyundai APA.

II. THE APAS WERE DRAFTED BY BOTH PARTIES

Stivers additionally misrepresents that the APAs were drafted by Peacock when it is aware that the APAs were prepared by and negotiated by the sophisticated lawyers of both parties at arm's length. Stivers even filed an Affidavit from its ivy league educated attorney stating that that he participated in the preparation of the APAs. (Affidavit of Richard L. McBride, Jr. ¶ 2, Ex. A). It is therefore, disingenuous for Stivers to argue that the APA language should be construed against Peacock.

III. THE APAS ARE NOT AMBIGUOUS AND LIMIT STIVERS' DAMAGES

The parties agreed under the provisions of the two APAs that the right to specific performance was the primary remedy available. (APA Sections 20(e) and 24(l)). The monetary damages available under the APAs to Stivers, in addition to specific performance, was retention of the Escrow Deposit for a breach of Section 20(d) or 22 (indemnification by Buyer). Two sophisticated parties with on-going concerns set the amount of the Escrow Deposit as the damages if Peacock failed to purchase the dealerships through no fault of Stivers. South Carolina law allows parties to prospectively set an amount of damages for breach through the inclusion of a liquidated damages provision. *Erie Ins. Co. v. Winter Constr. Co.*, 393 S.C. 455, 460, 713 S.E.2d 318, 321 (Ct. App. 2011).

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The APAs also address specific breaches for which injunctive relief is available. The allowance of injunctive relief for these specified events is consistent with the concept of specific performance. When read together as a whole the APAs consistently reflect the intent for the relief available to the parties to be some combination of specific performance, the Escrow Deposit, and/or injunctive relief.

A. Sections 20(d) and 20(e) are Not Inconsistent

Sections 20(a)-(e) of the Chevrolet APA addressed the manner in which the Escrow Deposit will be applied in various situations. Section 20(a) of the Hyundai APA incorporates Section 20 of the Chevrolet APA by reference.[2] Section 20(d) of the Chevrolet APA provides:

> (d) In the event that Buyer defaults upon the terms of this Agreement, without there being fault or failure to perform by Seller, the Escrow Deposit shall be forfeited to Seller as liquidated damages, and Seller shall have no further claim against Buyer.

The parties have therefore clearly agreed that the limit of monetary damages that Peacock may owe to Stivers for a default under either APA is the amount of the Escrow Deposit.

In Section 20(e), the parties also agreed that each would be entitled to the remedies enumerated in Section 24(l):

> (e) In the event of the failure of either party to perform the obligations imposed upon it, the other party hereto shall be entitled to specific performance of the provision or provisions breached (together with any other remedies at law or equity) as provided in Section 24(l) below.

The APAs consistently reflect the intent of the parties to provide three types of remedies depending on the breach: specific performance, the Escrow Deposit, and injunctive relief. In

[2] (a) Upon Seller's execution and redelivery of this Agreement, Buyer will promptly deliver, **as detailed under the Chevrolet APA**, the sum of ONE HUNDRED THOUSAND DOLLARS ($100,000) as an escrow deposit (the "Escrow Deposit") with Shutts & Bowen, LLP (the "Escrow Agent") to be held in escrow and disbursed by Escrow Agent **in accordance with the Chevrolet APA**. The Deposit shall serve as an earnest money deposit for both Transaction Agreements (as hereinafter defined). Upon the simultaneous closing of this the transactions contemplated in the Transaction Agreements, the escrow deposit shall be applied to the purchase price of the Related Dealership **as set forth in the Chevrolet APA**. (emphasis added)

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keeping with this intention, Chevrolet Section 20(e) provides that the remedies available to the parties are "as provided in Section 24(l) below," whether those remedies are specific performance or the additional remedies of the Escrow Deposit or injunctive relief.

Sections 20(d) and (e) must be read together with Section 24(l) and not in isolation. "It is fundamental that in the construction of the language of a [contract], it is proper to read together the different provisions therein dealing with the same subject matter, and where possible, all the language used should be given a reasonable meaning." *Highlands Prop. Owners Ass'n, Inc. v. Shumaker Land, LLC*, 397 S.C. 432, 724 S.E.2d 685 (S.C. App. 2012) quoting *Brady v. Brady*, 222 S.C. 242, 246, 72 S.E.2d 193, 195 (1952). There is no conflict in these provisions.

B. Section 24(l) is Consistent with Sections 20(d)

Reading the terms of the APAs in harmony with one another, Stivers is entitled to demand specific performance from Peacock and, in certain circumstances, to the Escrow Deposit or to injunctive relief. The purpose of the rules of contract construction is to ascertain the intention of the parties as gathered from the contents of the entire document and not from any particular provision within the contract. *Litchfield Co. of S.C., Inc. v. Kiriakides*, 290 S.C. 220, 223, 349 S.E.2d 344, 346 (Ct. App. 1986). Both Sections 24(l)(1) provide:

> (1) The parties hereto expressly recognize and agree that the transactions described in this Agreement are unique and that the payment of monetary damages alone may not be adequate remedy to a party for a breach of this Agreement by the other party; and that, as such, a party's remedies in case of default or failure to perform by the other party shall include the right to enforce this Agreement by specific performance. The forgoing shall not, however, limit any other rights or remedies **available** to either party arising from any breach by the other party; and any demand by one party for specific performance shall not constitute an election of remedies. (emphasis added)

Section 24(l) harmonizes Sections 20(d) and (e). The primary relief contemplated by the parties was specific performance. However, the Escrow Deposit may be available in addition to specific performance. The rights and types of remedies available to the parties are not limited by

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the APAs. For example, a party could bring an action for breach of contract and tortious interference with contract. The parties have agreed that the damages available are capped at the amount of the Escrow Deposit. These two provisions are not inconsistent.

Generally, the parties to a contract may set forth limitations on the damages available to enforce the contract that does not limit the remedies available to the non-breaching party. *See, e.g., Bannon v. Knauss*, 282 S.C. 589, 592, 320 S.E.2d 470, 472 (Ct. App. 1984) (stating "the presence of a liquidated damages clause in a contract does not limit the remedies available to the non-breaching party"); see also 7 Williston on Contracts § 15:12 (4th ed. 2010) ("[T]he parties are free to bargain away the right they would otherwise have to damages caused by a breach....").

The parties also agreed that money damages may not be adequate in certain enumerated circumstances. Both Sections 24(l)(2), therefore, provide for injunctive relief for breaches of the non-compete and non-solicitation provisions as well as the duty to retain customer information. Injunctive relief in these situations is akin to specific performance, Sections 24(l)(2) are, therefore, in harmony with 20(e).

Finally, Sections 24(l)(3) address indemnification claims against the Buyer brought under Section 22. The limitation of available recovery under Section 24(l)(3) to the rights granted in Section 22 is consistent with 20(d). Section 22 begins by explaining it is "[s]ubject to Section 20(d)." The indemnification rights granted to Stivers in Section 22 are not abrogated by Section 20(d); rather Section 20(d) provides a damages cap in the amount of the Escrow Deposit. Sections 24(l)(3) further provide that indirect, special, and punitive damages are not recoverable under Section 22. This is consistent with a limitation of recovery to the Escrow Deposit. The fact that the parties agreed that Stivers' indemnification rights against Peacock are capped at the amount of the Escrow Deposit does not render the contract ambiguous.

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IV. DAMAGES

Stivers misconstrues the issue of damages in this case. "The proper measure of damages for breach of contract is the loss that was actually suffered as the result of the breach. *Manios v. Nelson, Mullins, Riley & Scarborough, LLP*, 389 S.C. 126, 697 S.E.2d 644, 654 (Ct. App. 2010).

A. Plaintiff Must Prove Fair Market Value

The question of the measure of damages for an alleged breach of contract does not determine the damages to be awarded. The Court may refuse to render a declaratory judgment when the judgment would not terminate the uncertainty or controversy giving rise to the proceeding. S.C. Code Ann. § 15-53-70.

The fair market value of the assets must be established.[3] Stivers ignores the fact that the fair market value of the Hyundai/Genesis dealerships may be evidenced by transactions that occurred before and after the date the APAs were terminated.

B. The Doctrine of Mitigation Applies

Stivers also ignores the doctrine of mitigation even though it has admitted it has mitigated any damages related to the Chevrolet APA because the dealership was sold for more than the APA several months after Peacock terminated the APA. (Stivers' Third Supplemental Answers to Defendants' First Set of Interrogatories, Number 10 (Ex. C). Mitigation is a wholly separate calculation from any difference that may be shown between the contract price and the fair market value of the Hyundai/Genesis dealerships at the time the APAs were terminated.

[3] Stivers Hyundai is a going business and any method used to establish its value must take this into account. *See Moore v. Moore*, 414 S.C. 490, 524, 779 S.E.2d 533, 551 (2015) citing *Santee Oil Co. v. Cox*, 265 S.C. 270, 273, 217 S.E.2d 789, 791 (1975) (finding that in determining the fair market value of a corporate dissenter's shares the trial court must undertake to compute the fair value of the corporate property as "an established and going business.") The Court is not restricted to any one method of valuation, and each case must be decided on its own facts and circumstances. *Santee*, 265 S.C. at 273, 217 S.E.2d at 791.

Mitigation works both positively and negatively, meaning that Stivers' damages are reduced by both its successful mitigation efforts and its failure to mitigate. Stivers sold the Chevrolet dealership to a third party for more than the APA price. It admits that sale fully mitigated its damages as to the Chevrolet APA. Stivers did not attempt to sell the Hyundai/Genesis dealerships.

"It is the undoubted general rule that it is the duty of the owner of the property, which is injured by the negligence of another, to use reasonable means to minimize the damages." *Newman v. Brown*, 228 S.C. 472, 480, 90 S.E.2d 649, 653 (1955). "The duty to mitigate losses applies to contracts." *Cisson Constr., Inc. v. Reynolds & Assocs., Inc.*, 311 S.C. 499, 503, 429 S.E.2d 847, 849 (Ct.App.1993).

C. The Cases Cited by Plaintiff are Not Controlling

Despite its citation of irrelevant, non-controlling cases, Stivers is only entitled to be placed in the position it would have been in had the contract been performed. *See Drews Co. v. Ledwith-Wolfe Assocs., Inc.*, 296 S.C. 207, 209, 371 S.E.2d 532, 534 (1988). As a general rule, "[a] non-breaching party is not entitled, through the award of damages, to achieve a position superior to the one it would reasonably have occupied had the breach not occurred." *LaSalle Talman Bank, F.S.B. v. United States*, 317 F.3d 1363, 1371 (Fed.Cir.2003) (citing 3 E. Allen Farnsworth, Farnsworth on Contracts 193 (2d ed. 1998)). It has long been held that "one man's default should not lead to another man's unjust enrichment." *Priebe Sons v. United States*, 332 U.S. 407, 418 (1947).

Any damages Stivers claims as a result of the termination of the APAs must be offset by the benefits it received as a result. *See South Carolina Fin. Corp. v. West Side Fin. Co.*, 236 S.C. 109, 113 S.E.2d 329 (1960) (the proper measure of damages for breach of contract is the loss

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actually suffered as the result of the breach);[4] *LaSalle Talman Bank, F.S.B. v. United States*, 317 F.3d 1363, 1372 (Fed. Cir. 2003) ("where the defendant's wrong or breach of contract has not only caused damages, but has also conferred a benefit upon plaintiff which he would not otherwise have reaped, the value of his benefit must be credited to defendant in assessing the damages. 22 Am. Jur.2d Damages § 45 (limiting a party's recovery in a breach of contract action to "the loss that he has actually suffered by reason of the breach").[5] As Professor McCormick explains:

> Where the defendant's wrong or breach of contract has not only caused damage, but has also conferred a benefit upon plaintiff ... which he would not otherwise have reaped, the value of this benefit must be credited to defendant in assessing the damage.
>
> Charles T. McCormick, Handbook on the Law of Damages 146 (1935).[6]

The cases cited by the Stivers are not controlling and are not analogous to the present action.[7] Stivers wants to retain the Hyundai/Genesis dealerships, along with their increased values and profits realized, and receive the entire contract price of $3.5 million. This is not the factual scenario in any of the cases Stivers cites.

Turner Brd. Sys. Inc. v. McDavid, 693 S.E.2d 873 (Ga. App. 2010) addressed the alleged breach of a sale by the seller, Turner Broadcasting System. McDavid had contracted for the purchase of the Atlanta Hawks and Thrashers as well as the operating rights to Phillips Arena. Substantial evidence was presented at trial that the contract price was well below the fair market

[4] Stivers has alleged causes of action for breach of contract, breach of contract accompanied by a fraudulent act, and tortious interference with contractual relations. An action for breach of contract accompanied by a fraudulent act is an action in contract. *Peeples v. Orkin Exterminating Company, Inc*., 244 S.C. 173, 135 S.E.2d 845 (1964).

[5] *See Crossman Communities of North Carolina, Inc. v. Harleysville Mut. Ins. Co.*, No. 4:09-cv-1379-RBH, 2013 WL 5437712, at *27 (D.S.C. Sept. 27, 2013) (finding that applying the collateral source rule to contract law would contravene the principle that contractual damages are measured by the amount that the non-breaching party would have received if the contract had been performed as promised by awarding the non-breaching party more damages than necessary to compensate it for the breach.).

[6] *See Old Stone Corp. v. U.S.*, 450 F.3d 1360, 1378 (Fed. Cir. 2006) (holding non-breaching party should not be placed in a better position through the award of damages than if there had been no breach).

[7] Plaintiff also cites *Sharma v. Skaarup Ship Management Corp*., 916 F.2d 820 (2nd Cir. 1990) which arose from the alleged breach of a financing agreement for three vessels. This case is not controlling precedent, nor does it address the doctrine of mitigation.

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value of the two teams. The damages awarded by the jury, therefore, represented the value McDavid would have realized over the below market value contract price. This is simply not the issue in the present case.

First, Stivers is the seller, not the purchaser. Next, the doctrine of mitigation was not an issue in *McDavid*. There is no suggestion that McDavid had the opportunity to purchase comparable sports teams and did not do so. In the present case, however, there is ample evidence that Stivers could have sold the Hyundai/Genesis dealerships. It quickly sold the Chevrolet dealership; the market for dealership sales was extremely robust, and Peacock was able to sell its own Columbia Hyundai/Genesis dealerships at a significantly higher value than Stivers' original APA. Additionally, McDavid did not retain the assets from which he could continue to benefit after the transaction was cancelled. Stivers, in contrast, has realized a significant increase in the value of its business as well as millions of dollars in profits.

The doctrine of mitigation was also not addressed in *D.G. Porter, Inc. v. Fridley*, 373 N.W.2d 917 (N.D. 1985). Stivers incorrectly suggests this case stands for the proposition that a Plaintiff can retain a business following a breach of contract and recover any difference between the fair market value at the time of the breach and the contract price with no additional considerations affecting the final determination of damages that could be awarded.

Instead, the North Dakota Supreme Court remanded the case to the trial court to determine damages, including the issue of the fair market value of the business. Importantly, the Court noted that Porter stated in his brief on appeal that he had contracted with a third party for the resale of the business following Fridley's abandonment of the premises. *Id.* at 925. This issue was also remanded to the trial court to consider. Whether Porter mitigated his damages and the impact of any events after the contract was rescinded on the final determination of damages is not addressed by the North Dakota Supreme Court.

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The case of *Turner v. Shalberg* 70 S.W. 3d 653 (2002), cited by Stivers, is also easily distinguished. Turner had already sold his business to Brent Geraughty. When Geraughty stopped making payments on the purchase, Turner entered into a contract to resell the business to Shalberg. Geraughty agreed to continue to operate the business as close to the date of the sale as possible. Turner did not have a business license or liquor license. The licenses were in Geraughty's name as he had been operating the business.

Geraughty ceased operation of the business shortly before Shalberg defaulted on the sale. The Missouri Court of Appeals found that Shalberg caused the business to fail, as he was supposed to take over operation and obtain the necessary liquor and business licenses. The Missouri Court additionally found that at the time of Shalberg's default, there was no on-going business to sell and all Turner had was the personal property in the business, which he liquidated. Turner could not offer a business he no longer had to another buyer, nor could he continue to operate the business without the required licenses.

In the present case, Stivers had an on-going business at the time the APAs were terminated. It could have offered the Hyundai/Genesis dealerships for sale, as it did the Chevrolet store. Instead, Stivers has continued to operate the Hyundai/Genesis businesses and has realized substantial profits.[8] While Stivers may not have been required to resell the Hyundai/Genesis stores, the doctrine of mitigation certainly applies to determine whether it has suffered any damages.

[8] From April, 2020 through March, 2022, Stivers realized in excess of $5.8 million in net profits from the operation of the Columbia Hyundai and the Genesis franchises and continues to realize profits. Stivers also realized $265,398 operating net profits for the Chevrolet store for the period of April, 2020 – September, 2020. The value of Stivers' Hyundai/Genesis dealerships greatly increased following the termination of the APA. The multiplier for Hyundai/Genesis dealerships was 3-3.5 of annual net profits in the fourth quarter of 2019. (Haig Q4 2019, Ex. D). The multiplier rose to 3.75-4.75 by the third quarter of 2021.(Haig Q3 2021, Ex. E) The value of Stivers' Hyundai/Genesis dealerships would have increased to $6.125-7.875 million following the termination of the APA even if Stivers did not experience an exponential increase in profits. Stivers' realized net profits means it experienced an even greater increase in blue sky value.

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CR–RSC Tower I, LLC v. RSC Tower I, LLC, 429 Md. 387, 56 A.3d 170 (Md. 2012) is also factually distinguishable. The owners of two adjoining properties leased them to developer-tenants for the purpose of building an apartment building on each. As construction was beginning, the landlords breached the ground leases by refusing to provide estoppel certificates and contesting the tenants' building permits. The landlords' breach prevented the tenants from obtaining financing, which ended the development project. The tenants sued for lost profits.

The Supreme Court of Maryland found the profit projected prior to breach was the relevant measure of damages. Again, the Court was not asked to address post-breach activity as it applied to the doctrine of mitigation. In citing non-controlling law, Stivers ignores the fact that South Carolina courts have found evidence of sale prices post-breach to be admissible as to the fair market value of property. *See Benya v. Gamble*, 282 S.C. 624, 632, 321 S.E.2d 57, 62 (Ct. App. 1984) (allowing evidence of the sale price eighteen months after the contract was breached).

CONCLUSION

The intent of the parties that specific performance, the Escrow Deposit, and injunctive relief were the remedies available for a breach of various provisions of the APAs is unambiguous when the contracts are read together as a whole.

Any damages claimed by Stivers are subject to the doctrine of mitigation. This fairly places the Plaintiff in the position it would have enjoyed had the contract been performed and does not result in a windfall to it.

Defendants therefore request that this Court deny Stivers' Motion for Summary Judgment and grant Defendants' Motion.

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May 17, 2023

Respectfully submitted,

s/Bradford N. Martin
Bradford N. Martin, Esq. (SC Bar No. 3658)
Laura W. H. Teer, Esq. (SC Bar No. 16698)
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ATTORNEYS FOR DEFENDANTS
PEACOCK AUTOMOTIVE, LLC AND
W. WARNER PEACOCK

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CASE NO. 2020-CP-40-01934
	)	
STIVERS BROTHERS AUTOMOTIVE, INC.,	)	
	)	
Plaintiff	)	
	)	
v.	)	**AFFIDAVIT**
	)	
W. WARNER PEACOCK, and PEACOCK AUTOMOTIVE, LLC,	)	
	)	
Defendants	)	
	)	

Personally appeared before me, the undersigned, who first being duly sworn, deposes and says:

1. He is attorney for the Plaintiff.

2. He represented the Plaintiff in the negotiation, preparation, and execution of that certain Asset Purchase and Sale Agreement, dated January 7, 2020 (the "Chevrolet Purchase Agreement"), between Plaintiff and Defendant Peacock Automotive, LLC (the "LLC"), for the purchase by Defendant LLC of Plaintiff's Chevrolet dealership business located at 111 Newland Road in Columbia, South Carolina (the "Chevrolet Dealership").

3. He also represented the Plaintiff in the negotiation, preparation, and execution of that certain Asset Purchase and Sale Agreement, dated January 7, 2020 (the "Hyundai Purchase Agreement"), between Plaintiff and Defendant LLC for the purchase by Defendant LLC of Plaintiff's Hyundai dealership business located at 101 Newland Road in Columbia, South Carolina (the "Hyundai Dealership").

4. On March 30, 2020, he received a letter via e-mail from the Defendants' counsel, addressed to the Plaintiff and dated March 27, 2020, in which the Defendant LLC notified Plaintiff that the Defendant LLC was terminating the Chevrolet Purchase Agreement and the Hyundai Purchase Agreement.

5. On June 11, 2020, he received a proposed Letter of Intent (the "Letter of Intent") via e-mail from the Defendant's counsel, addressed to the Plaintiff, in which the Defendant LLC, made a new offer to purchase the Plaintiff's Hyundai Dealership business.

6. Plaintiff advised him that the Plaintiff was not agreeable to the terms of the Defendant LLC's Letter of Intent and instead instructed him to prepare, for presentation to the Defendants, a new Asset Purchase and Sale Agreement for the sale of the Plaintiff's Hyundai Dealership business to the Defendant LLC that contained terms the Plaintiff was willing to accept (the "New Hyundai Purchase Agreement").

EXHIBIT B

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7. He prepared said New Hyundai Purchase Agreement and, after receiving approval of the same from the Plaintiff, presented it to the Defendant's counsel via e-mail on June 22, 2020. Within said e-mail to counsel, and upon instruction from the Plaintiff, he advised counsel that, among other things, (1) Plaintiff was not interested in signing the Letter of Intent, (2) there was not much room for negotiation in the attached New Hyundai Purchase Agreement, and (3) the Defendant LLC had until 12:00 p.m. EST on Friday, June 26, 2020, to accept the New Hyundai Purchase Agreement.

8. Following delivery of the New Hyundai Purchase Agreement to Defendants' counsel, he and Defendants' counsel negotiated certain changes in said Agreement that were proposed by Defendant's counsel. He and Defendants' counsel could not resolve all items at issue by the 12:00 p.m. EST deadline on Friday, June 26, 2020, that Plaintiff gave Defendants, so, at Plaintiff's instruction, he notified Defendants' counsel that Plaintiff was willing to extend its deadline for acceptance and execution of the New Hyundai Purchase Agreement to 5:00 p.m. EST on Friday June 26, 2020.

9. Plaintiff ultimately accepted some of the changes that Defendants' counsel proposed to the New Hyundai Purchase Agreement, but did not accept others. In an e-mail sent by him to Defendants' counsel at 5:46 p.m. CST on Friday, June 26, 2020, he advised Defendants' counsel that Plaintiff would not agree to further changes to the New Hyundai Purchase Agreement and, at Plaintiff's instruction, notified Defendants' counsel that Plaintiff was willing to extend its deadline for acceptance and execution of the New Hyundai Purchase Agreement (as modified by the changes accepted by Plaintiff) until 12:00 p.m. EST on Monday, June 29, 2020.

10. On Saturday, June 27, 2020, he received an e-mail from Defendants' counsel advising that Defendants' counsel believed that the parties were at an impasse with respect to the New Hyundai Purchase Agreement.

11. Later that Saturday, he notified Plaintiff of Defendants' counsel's e-mail, and, in response to Defendants' counsel's e-mail, Plaintiff advised him that Plaintiff would return their focus to the ongoing litigation between Plaintiff and Defendants.

12. On or about Tuesday, June 30, 2020, he received a phone call from Defendants' counsel in which Defendants' counsel expressed his desire to revisit negotiation of the New Hyundai Purchase Agreement. As a follow up to that call, Defendants' counsel sent him an e-mail on Friday, July 3, 2020, in which Defendants' counsel listed what Defendants' counsel believed to be the outstanding issues remaining between the parties with respect to the New Hyundai Purchase Agreement.

13. On Monday, July 6, 2020, he advised Plaintiff of his recent communications with Defendants' counsel, and in response thereto, Plaintiff agreed to re-open negotiations with Defendant LLC concerning the New Hyundai Purchase Agreement.

14. Thereafter, he negotiated additional changes to the New Hyundai Purchase Agreement with Defendants' counsel. Duding these negotiations, Plaintiff advised him that Plaintiff would not agree to some of the changes requested by Defendants' counsel

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15. In an e-mail to Defendants' counsel on Tuesday, July 14, 2020, he advised Defendants' counsel that Plaintiff would not agree to certain of Defendants' requested changes. In that same e-mail, he also advised Defendants' counsel that Plaintiff had plans to hire a new general manager for the Hyundai Dealership on Wednesday, July 15, 2020, and would not negotiate a sale of the Hyundai Dealership business after making that hire. As a result, and at Plaintiff's instruction, he advised Defendants' counsel at the end of that e-mail that Plaintiff must have an executed New Hyundai Purchase Agreement no later than 9:00 a.m. CST on Wednesday, July 15.

16. In a later e-mail to Defendants' counsel on Tuesday, July 14, he advised Defendant's counsel, at Plaintiff's instruction, that if Defendant LLC agreed to certain terms in the New Hyundai Purchase Agreement, Plaintiff would extend the deadline to sign the New Hyundai Purchase Agreement to 5:00 p.m. CST on Wednesday, July 15, 2020, and extend the time to fund the escrow thereunder to 12:00 p.m. CST on Thursday, July 16, 2020.

17. Following his various communications with Defendants' counsel, he revised the New Hyundai Purchase Agreement pursuant to the instructions of Plaintiff and delivered the newly revised New Hyundai Purchase Agreement to Defendants' counsel in an e-mail on Wednesday, July 15, 2020. In that e-mail, he notified Defendants' counsel, at Plaintiff's instruction, that the attached revised New Hyundai Purchase Agreement was not negotiable and that Plaintiff was giving Defendant LLC until 6:00 p.m. CST that night to execute the same and until 1:00 p.m. CST the next day to fund the escrow thereunder.

18. In a later e-mail on July 15, 2020, Defendants' counsel requested that he make several additional changes to the New Hyundai Purchase Agreement, and, after his consultation with Plaintiff, Plaintiff agreed to most of the requested changes. Thereafter, in a reply e-mail to Defendants' counsel, he sent a further revised version of the New Hyundai Purchase Agreement to Defendants' counsel.

19. Later that same night, on July 15, 2020, he sent an e-mail to Defendants' counsel in which he, at Plaintiff's instruction, again extended Plaintiff's deadline for the execution of the further revised New Hyundai Purchase Agreement by Defendant LLC to 8:00 p.m. CST that night.

20. At 7:57 p.m. CST the same night, he received an e-mail from Defendants' counsel advising that Defendants' counsel could not get a hold of Warner Peacock to sign the further revised New Hyundai Purchase Agreement.

21. After receipt of the 7:57 p.m. e-mail from Defendants' counsel, he advised Plaintiff of Defendants' counsel's e-mail, and, in response, Plaintiff advised him that Plaintiff would not entertain further negotiations with Defendants as to the New Hyundai Purchase Agreement.

Further, the deponent sayeth not.

Richard L. McBride Jr.

Richard L. McBride Jr. 10-10-20

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STATE OF ALABAMA)
:
COUNTY OF MONTGOMERY)

I, the undersigned authority, a Notary Public in and for said state at large, hereby certify that Richard L. McBride Jr., whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal of office this 10th day of October, 2020.

TANESHA BARRON NOTARY PUBLIC (SEAL) My Commission Expires Aug. 21, 2023 ALABAMA STATE AT LARGE

Tanesha Barron
NOTARY PUBLIC
My Commission Expires: 08/21/2023

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FIFTH JUDICIAL CIRCUIT**
COUNTY OF RICHLAND	)	
	)	C/A NO. 2020-CP-40-01934
STIVERS BROTHERS AUTOMOTIVE, INC.,	)	**AFFIDAVIT OF J. GREGORY HUMPHRIES**
Plaintiff,	)	
v.	)	
W. WARNER PEACOCK and PEACOCK AUTOMOTIVE, LLC,	)	
Defendants.	)	

PERSONALLY APPEARED before me, the undersigned, who being duly sworn, deposes and states as follows:

1. I am over the age of 18 and competent to make this Affidavit.

2. Except for matters stated upon information and belief, I have personal knowledge of the facts contained in this Affidavit.

3. I am an attorney at law practicing in the area of corporate transactions in Orlando Florida. The firm of Shutts & Bowen, LLP has acted as a transactional counsel on behalf of Peacock Automotive, LLC regarding the purchase of the Hyundai dealership in Columbia from Stivers Brothers Automotive, Inc.

4. I have represented the Defendants for many years and was tasked with preparing contracts for the purchase and sale of two Columbia, South Carolina motor vehicles dealerships owned by the Stivers (Chevrolet and Hyundai/Genesis).

5. I communicated directly with Stivers' attorney Rick McBride, Jr., of Montgomery Alabama.

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6. After the original APAs of January 7, 2020 were terminated by letter of March 27, 2020, I contacted Mr. McBride to discuss the purchase of the Hyundai/Genesis dealership.

7. I prepared a formal Letter of Intent ("LOI") and transmitted it to Mr. McBride on June 11, 2020 for the purchase of the Hyundai/Genesis dealership.

8. I received a counter proposal Asset Purchase Agreement from Mr. McBride on June 22, 2020.

9. I sent a signed APA to Mr. McBride on July 23 for the purchase of the Hyundai/Genesis dealership. (Exhibit A) The new APA provided that the payment would be all cash up front, that Purchaser would assume any extensions of the lease that Stivers had entered into, and would provide an additional payment of up to $200,000 for Seller's attorneys' fees and costs.

10. I once again sent an executed APA to Mr. McBride on behalf of my clients on October 26, 2020. (Exhibit B)

11. Both Agreements were executed would have been effective upon signing by the Seller.

12. Despite the fact that the price was the same as agreed to in January, and the terms were more favorable to Stivers, I never received a signed APA in response.

13. It is my belief that Stivers sold the Chevrolet dealership to another purchaser and that sale closed one or about October 7, 2020. (Exhibit C)

FURTHER AFFIANT SAYETH NOT.

J. Gregory Humphries

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SWORN TO before me this 4th

day of December, 2020.

Tracy Augustyni

Notary Public for Florida

My Commission Expires: _____

NOTARY PUBLIC STATE OF FLORIDA

TRACY AUGUSTYNI
Commission # GG 306524
Expires May 20, 2023
Bonded Thru Budget Notary Services

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From: J. Gregory Humphries
Sent: Thursday, July 23, 2020 3:50 PM
To: Rick McBride Jr. (rick@mcbridelawllc.com)
Subject: Stivers/Peacock

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Rick, In an effort to continue to seek resolution of our clients dispute, I am attaching a revised version of the contract to sell the Columbia Hyundai dealership, together with a signature page executed by Mr. Peacock. As you can see in the attached redline, we have made a few revisions that deal with the logistics of the process of obtaining approvals and closing on the acquisition. We have also eliminated the Chevy Transaction contingency which has perhaps resolved itself at this point as you are closer to consummating that transaction. If your clients would like to move forward pursuant to this contract, please advise prior to COB on Monday July 27. If we do not have an acceptance by that time, then the offer shall automatically be withdrawn.

Any questions, let me know. Thanks, Greg

Shutts

J. Gregory Humphries
Partner

Shutts & Bowen LLP
300 South Orange Avenue, Suite 1600 | Orlando, FL 32801
Direct: (407) 835-6940 | Fax: (407) 849-7240
E-Mail | Biography | V-Card | Website

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Exhibit A to
Affidavit of J. Gregory Humphries

Asset Purchase and Sale Agreement dated July 23, 2020

To be filed pursuant to Motion to Seal dated December 4, 2020

ELECTRONICALLY FILED – 2023 May 17 12:22 PM – RICHLAND – COMMON PLEAS – CASE#2020CP4001934

From: J. Gregory Humphries <JHumphries@shutts.com>
Sent: Monday, October 26, 2020 1:14 PM
To: Rick McBride Jr. (rick@mcbridelawllc.com) <rick@mcbridelawllc.com>
Cc: John M. "Jay" Brennan <Jay.Brennan@gray-robinson.com>
Subject: Peacock Stivers - Hyundai

FILED ELECTRONICALLY FILED – 2023 May 17 12:22 PM – RICHLAND – COMMON PLEAS – CASE#2020CP4001934

This message originated outside of GrayRobinson.

Rick, We understand that you have had a successful closing on the Chevrolet dealership in Columbia. In light of that matter being concluded, we would again like to advance our offer to purchase the Hyundai dealership. Attached is an APA executed by Mr. Peacock. We assume to attorney fee issue can now be quantified and will incorporate if you can provide the info. I have also attached a marked copy to the last document we sent to you. Any questions, let me know. Thanks, Greg

Shutts

J. Gregory Humphries
Partner

Shutts & Bowen LLP
300 South Orange Avenue, Suite 1600 | Orlando, FL 32801
Direct: (407) 835-6940 | Fax: (407) 849-7240
E-Mail | Biography | V-Card | Website

ELECTRONICALLY FILED – 2022 May 10 12:22 PM – RICHLAND – COMMON PLEAS – CASE#2020CP4001934

Exhibit B to
Affidavit of J. Gregory Humphries

Asset Purchase and Sale Agreement dated October 26, 2020

To be filed pursuant to Motion to Seal dated December 4, 2020

EX. B
ELECTRONICALLY FILED – 2020 May 07 12:22 PM – RICHLAND – COMMON PLEAS – CASE#2020CP4001984

https://www.coladaily.com/business/jim-hudson-automotive-acquires-chevrolet-dealership-in-columbia/article_e22bcef8-0853-11eb-b698-4fb37b1abb91.html

FEATURED

Jim Hudson Automotive acquires Chevrolet dealership in Columbia

Karamie Hallman
Oct 7, 2020



Photo from jimhudsonchevy.com

Jim Hudson Automotive Group has just opened a Chevrolet Dealership in Columbia. The family-owned company purchased what was formerly Stiver's Chevrolet and officially opened its doors to customers under the new ownership Tuesday. The dealership is located at exit I-20 and Clemson Road in Columbia.

According to company officials, this is the automotive group's second dealership acquisition for the year after opening Jim Hudson Acura in August, located in Augusta.

The dealership is equipped to provide all Chevrolet Certified vehicle services, as well as offer the area a large selection of both new and certified pre-owned Chevrolet vehicles.

The Jim Hudson Automotive Group has been serving the Midlands since 1980, and has built its brand on a dedication to 100% customer satisfaction in every facet of its business, according to company representatives.

The Group represents nine of the industry's brands: Ford, Toyota, Lexus, Audi, Cadillac, Buick, GMC, Acura and now Chevrolet, as well as a vast selection of used and certified pre-owned vehicles of all makes and models.

More information about the new dealership can be found at jimhudsonchevy.com.

ELECTRONICALLY FILED - 2023 May 17 4:33 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CASE NO. 2020-CP-40-01934
	)	
STIVERS BROTHERS AUTOMOTIVE, INC.,	)	
	)	**PLAINTIFF'S THIRD SUPPLEMENTAL ANSWERS TO DEFENDANTS' FIRST SET OF INTERROGATORIES**
Plaintiff,	)	
	)	
v.	)	
	)	
W. WARNER PEACOCK and PEACOCK AUTMOTIVE, LLC,	)	
	)	
Defendants.	)	
	)	

TO: BRADFORD N. MARTIN, ESQ., ATTORNEY FOR DEFENDANTS

The Plaintiff, by and through its attorneys, hereby supplements its answers to Defendants' First Set of Interrogatories as follows:

10. State with specificity the damages you are claiming as a result of the allegations contained in the complaint. For each item of damages listed, set forth method used to calculate such damages.

ANSWER

At a minimum, the Plaintiff claims liquidated damages of $100,000.00 as provided by paragraph 20(d) of the Chevrolet APA and paragraph 20 of the Hyundai APA.

Because the APAs were executory contracts where the time for delivery was dependent upon several affirmative actions of the buyer, Peacock Automotive (i.e. obtaining manufacturer approval, entering an assignment of lease, etc.), the Plaintiff's damages arising from the breach of the Hyundai/Genesis APA is the difference between the contract price and the fair market value of the assets on the date of the breach. The Plaintiff will present the opinion testimony of Edward Stivers that the difference on the date of the breach was $3,500,000.00. The Plaintiff sold the Chevrolet assets to Jim Hudson Automotive Group and has mitigated its damages as to the Chevrolet APA.

The Plaintiff suffered losses in anticipation of closing, including but not limited to losses on the liquidation of used vehicles, service loaners, demonstrators, and damages vehicles. The Plaintiff will supplement this category of damages when these sums are determined.

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The Plaintiff has suffered additional damages, including the payment of additional rent ($1,253,520.84 per annum, payable in monthly installments of $104,460.07), annual property taxes ($173,865.25), and insurance premiums ($117,951.69 per annum) owed under the lease between the date of the breach and October 5, 2020, the date when the Plaintiff closed on the sale of the Chevrolet assets to Jim Hudson Automotive Group. Once Jim Hudson Automotive Group assumed the lease for 111 Newland Road per the terms of the Asset Purchase Agreement, the Plaintiff's monthly rent was reduced to $40,000.00, and a prorated share of the total property taxes and insurance.

In order to preserve the value of its Hyundai/Genesis franchise, the Plaintiff has also been required to purchase real estate at a cost of $2,200,000.00, enter into a construction contract for $12,000,000.00 to build a facility, and to spend $1,100,000.00 on equipment and $600,000.00 on furnishings.

Finally, the Plaintiff suffered approximately $300,000.00 in consequential damages for the increased acquisition cost of another dealership occasioned by Peacock Automotive's breach.

11. List each and every lawsuit you have been involved or a party to, including the caption of the lawsuit, nature of the lawsuit, date filed, the court in which it was filed, and the disposition for the last (10) years.

ANSWER

Madonna Reed v. Stivers Chevrolet
C.A. No.: 2019-CV-40-10900640
Nature: Breach of Contract
Filed: 4/25/2019
Pontiac Magistrate
Disposition: Settled

Stivers Brothers Automotive, Inc. v. Albert L. Brown
C.A. No. 2019-CP-40-05773
Nature: Breach of Warranty of Title
Filed: 5/24/2019
Richland County Court of Common Pleas
Disposition: Pending

ELECTRONICALLY FILED - 2023 May 17 4:33 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

Ruthena Barcus v. Stivers Brothers Automotive, Inc.
C.A. No. 2019-CV-40-10901074
Nature: Contract Dispute
Filed: 7/9/2019
Pontiac Magistrate
Disposition: Settled

Derrick Bright v. Stivers Chevrolet
C.A. No.: 2019-CV-40-10901731
Nature: Contract Dispute
Filed: 10/17/2019
Pontiac Magistrate
Disposition: Dismissed

Stivers Brothers Automotive, Inc. v. Peacock Automotive, LLC and W. Warner Peacock
C.A. No. 2020-CP-40-01934
Nature: Declaratory Judgment, Breach of Contract, Breach of Contract Accompanied by a Fraudulent Act, Violation of the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act, Tortious Interference, Corporate Veil Piercing
Filed: 4/13/2020
Richland County Court of Common Pleas
Disposition: Pending

Signature appears on the following page.

ELECTRONICALLY FILED - 2023 May 17 4:33 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

STUDEMEYER LAW FIRM, P.C.

/s/ Ryan G. Studemeyer

J. Gregory Studemeyer
S.C. Bar # 5416
Ryan G. Studemeyer
S.C. Bar # 102578
7478 Carlisle Street
P.O. Box 1014
Irmo, S.C. 29063
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DOUGLAS JENNINGS LAW FIRM, LLC

/s/ J. Michael Baxley

J. Michael Baxley
S.C. Bar # 591
225 Seven Farms Drive, Suite 202
Charleston, SC 29492
(843) 408-0070

Attorneys for the Plaintiff

Irmo, South Carolina

November 24, 2021

ELECTRONICALLY FILED - 2023 May 17 4:33 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

THE HAIG REPORT

Q4 | 2019

TRENDS IN AUTO RETAIL AND THEIR IMPACT ON DEALERSHIP VALUES



- *Economic conditions were highly favorable at the end of 2019*
- *Profits were up for public and private dealers*
- *Buy-sells were up 44% in Q4 2019 but down 13% on the year due to a slow start*
- *Public company spending jumped 73% in Q4 2019 but down 9% on the year due to a slow start*
- *More transactions involved single stores or very small groups (lower risk tuck-ins)*
- *Blue sky values are shifting*
- *Buy-sell activity was picking up as buyers became more confident*
- *THE CORONAVIRUS WILL ALTER THESE TRENDS. SEE PAGES 14 AND 17 FOR OUR OUTLOOK ON THE INDUSTRY AND BUY-SELLS*

HAIG PARTNERS

ELECTRONICALLY FILED - 2023 May 17 4:33 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

reimburse up to 75% of marketing costs associated with EVs. This could be a good time to invest in the franchise particularly in areas like CA as Volkswagen will be a future leader in the EV industry. **Same multiple range: 3.0x-4.0x.**

Kia

Kia sales rose 4.4% on the year, supported almost entirely by the 2020 North American Utility Vehicle of the Year, the Telluride. We have heard of big grosses on Tellurides – almost Porschesque. As Kia's mix of cars/CUVs continues to improve, dealers are seeing an improvement in dealership profitability and they are happier than they have been for several years. There is still room for improvement regarding fixed operations and F&I. **Same multiple range: 3.0x-3.75x.**

Hyundai

Hyundai saw a 3.2% increase in 2019 sales which can be attributed to the new full size SUV, the Palisade. Like its Kia cousin, the Palisade is selling well over sticker in many markets. Hyundai's first pickup is also scheduled to be released in 2021. We hope it performs more like the Tacoma than the Frontier. The company recently released its Complimentary Maintenance program, which provides new vehicle owners with free routine maintenance for three years/36,000 miles. Dealers have a lot to celebrate, including a promising product pipeline and a recently revamped dealer compensation program. Some, however, have concerns that CEO Jose Munoz will try to establish some of the stair-step programs and wholesale pressure that existed at Nissan when he was the North American leader there and caused that franchise deep distress. **Same multiple range: 3.0x-3.5x.**

Mazda

Mazda sales have fallen 7.3% throughout 2019. The brand has decided to focus more on upscale models than its current mainstream models, but this transition is not easy for any brand in any industry. Early sales of the new CX-30 crossover are encouraging, so some dealers are optimistic that 2020 will see an increase in sales momentum. Despite some attractive products, few dealers target this brand. We have been involved in four group transactions over the past year with Mazda stores and they brought little value. **Multiple reduced by 0.5x on top and 0.75x on bottom of range: 2.0x-3.0x.**

Nissan

Nissan sales slumped 8.7% in 2019 as the company continues to experience the lingering effects of the Ghosn scandal and dealers' distaste for its business model. Corporate turmoil has led to an aging lineup, further dragging down dealer profits. The new CEO, Makoto Uchida, has noted that restructuring will be more extensive than originally planned. The company has pledged to speed-up new product launches and offer the newest portfolio of all Japanese brands in a year. Higher incentives, advertising and financial incentives have helped sales in the past 45 days. Some Nissan stores across the country are generating decent profits, but many are losing money. Management in the U.S. has not yet stabilized, giving concern to many dealers. It doesn't feel like we have hit the bottom at Nissan yet. **Multiple reduced by 0.75x on top and bottom of range: 2.0x-3.0x.**

Domestic Franchise Blue Sky Multiples

(Note: The multiples paid for domestic franchises will likely be higher in markets like Texas where trucks sell well and lower in markets like California where imports dominate.)

Ford

Ford sales dropped 3.7% in 2019 largely due to car sales dropping 29% as it retreats from this segment to focus on trucks and SUVs. Many dealers applaud the promotion of Jim Farley to COO, but investors have been shunning the stock due to Ford's listless performance. On the bright side, the new Ranger has been selling well and reservations for the upcoming electric Mustang Mach-E crossover are full. With so many Ford stores on the market and little momentum, we are reducing our valuation slightly. **Multiple reduced by 0.5x on top and bottom of range: 3.0x-4.0x.**

Chevrolet

Chevrolet sales decreased by 3.8% in 2019. The strike hurt a little bit, but most dealers had adequate inventory to meet demand. A number of dealers complain that GM is spending too much capital and engineering resources on EVs and autonomous vehicles and not enough on products that people want to buy today. Some help is coming, however. Consumers are excited about the upcoming Corvette. Demand is five times more than what GM predicted and the car was recently named the 2020 North American Car of the Year. High grosses on Corvettes will boost many bottom lines around the country when they begin to show up in meaningful numbers. Redesigned full-size Tahoes and Suburbans should also arrive this year. With so many Chevrolet stores on the market and little momentum, we are reducing our valuation slightly. **Multiple reduced by 0.25x on top and bottom of range: 3.25x-4.25x.**

FCA (Chrysler-Jeep-Dodge-Ram-Fiat)

Sales are down 1.4% in 2019. Chrysler sales dropped 23.5% and Fiat plummeted 40.7%, and Jeep sales are down 7.2%. The highly anticipated Jeep Gladiator's sales slowed down after a hot start, but dealers plan to challenge other brands in volume with heavy transaction discounts made possible by the model's high-profit margin. Ram was the only brand that realized an increase in sales at 17.7%. Ram has enjoyed high margins with some of its larger trucks and is looking to increase future volume as well. Executives are enthusiastic about a favorable model mix and high production efficiency but are looking to improve North American volume. **Same multiple range: 3.25x-4.25x.**

Buick-GMC

Buick sales were flat throughout 2019, with less than 0.1% growth. GMC sales increased by 1.5%. Despite its tiny market share, Buick placed first in J.D. Power's 2019 U.S. Sales Satisfaction Index Study for mass-market brands. Dealers have reported lost SFE incentive money, but the brand has listened and is attempting to improve on dealer issues. New car margins continue to decrease, but dealers are optimistic that an upcoming enhanced portfolio will improve profitability. Redesigned Yukons are on the way. With so many B-GMC stores on the market and little momentum, we are reducing our valuation slightly. **Multiple reduced by 0.25x on top and bottom of range: 3.0x-4.0x.**

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THE HAIG REPORT

Q3 | 2021

TRENDS IN AUTO RETAIL AND THEIR IMPACT ON DEALERSHIP VALUES

- *The Chipdemic continues to create extraordinarily favorable conditions in auto retail*
- *The average privately-owned dealership made $3.4M over the last twelve months ending Sep'21, 2.4x profits in 2019*
- *Public company spending on US auto acquisitions has exceeded $2.8B YTD Q3*
- *Public company spending on US auto acquisitions may reach $8B by year end 2021, 3.4x higher than 2020*
- *Blue sky values rose an estimated 61% from the end of 2019 and are at record-high levels*
- *Public equity valuations are 108% higher than they were before the Pandemic*

HAIG PARTNERS

INTEGRITY. CONFIDENTIALITY. EXPERIENCE.

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MID-LINE IMPORT FRANCHISE BLUE SKY MULTIPLES

Toyota
Toyota announced a 27.5% increase in the third quarter of 2021 YTD compared to the same time last year. In a recent NADA survey, dealers ranked Toyota #2 behind Lexus in terms of their optimism about the franchise. We have had the privilege of selling six Toyota dealerships this year and enjoyed strong offers on each one. **Same multiple range on average adjusted pre-tax profit: 6.25x-7.25x.**

Honda
Honda sales in YTD Q3 2021 were up 18.9%. Although it has been losing share to Toyota, Hyundai and Kia recently, dealers are feeling good about Honda, ranking it #5 in terms of their optimism for the future in a recent NADA survey. Their products remain strong sellers and the business model is nicely balenced. **Same multiple range on average adjusted pre-tax profit: 6.0x-7.0x.**

Subaru
Subaru reported a 6.0% increase in the first nine months of 2021 compared to the same period in 2020. This brand has suffered more than most in terms of production shortages as consumer demand remains very solid. Subaru has among the lowest days supply of any franchise. Dealers are very keen on US management and the overall business model, ranking it #4 in the overall rating category. We have been involved in the sale of several Subaru stores recently and demand was high. **Same multiple range on average adjusted pre-tax profit: 6.0x-7.0x.**

VW
Volkswagen saw sales increase by 25.6% in the first nine months of 2021 compared to the same period in 2020. SUV sales were up 58.2%, getting VW closer to the industry average. The inventory shortage helped VW dealers more than most since its margins have long been compressed. VW is highly focused on EVs, but it remains to be seen how this strategy will play out. If consumers choose to buy EVs then VW could take significant share since it will likely have more models for consumers than most other brands. But if not, VW dealers will have little to sell. **Same multiple range on average adjusted pre-tax profit: 3.0x-4.0x.**

Kia
Kia sales increased 29.7% in the first nine months of 2021 compared to the same time period last year. Kia's recovery from the Pandemic has been quicker than most due to good products and adequate inventory. Dealers have become highly enamored with Kia recently, ranking it just behind Lexus and Toyota in terms of their optimism for the future. Kia dealership profits have jumped substantially thanks to higher volumes and better products. **Higher multiple range on average adjusted pre-tax profit: 3.75x-4.75x.**

Hyundai
Hyundai enjoyed a 36.3% sales increase in the first nine months of 2021 compared to the same period in 2020, leading all franchises that we track. Hyundai's recent success is thanks to its new CUVs, including the full-sized Palisade which dealers struggle to keep in stock. Dealers are excited by this franchise and we see it out-earning several other major franchises now. Questions regarding the Genesis franchise are hurting relations between dealers and the OEMs. Consumers are excited about the products, but the supply to dealers is so low that few can justify the standalone facilities Hyundai is requesting. **Higher multiple range on average adjusted pre-tax profit: 3.75x-4.75x.**

Mazda
Mazda continues to be one of the top-performing franchises with an increase of 34.4% in the first nine months of 2021 compared to the same period last year. Mazda weathered the Pandemic well and continues to excite dealers with the momentum being built from planned new product launches and positive consumer perceptions. Dealers that have constructed new facilities are very pleased with the 12% margins they are earning, putting Mazda in a zone between midline and premium luxury brands. **Same multiple range on average adjusted pre-tax profit: 3.0x-4.0x.**

Nissan
Nissan announced a 23.1% increase in sales in the first nine months of 2021 compared to the same period in 2020. New and upcoming core products should allow Nissan dealers to try to recover further. Judy Wheeler and other Nissan execs have been visiting with dealers and mending fences. Nissan says it will put dealer profits and sustainable growth at the forefront of its strategy. The new strategy appears to be bearing fruit. Value seeking dealers are interested in acquiring this franchise again and we are pleased to see Nissan heading in the right direction. **Higher multiple range on average adjusted pre-tax profit: 3.25x-4.25x.**

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FIFTH JUDICIAL CIRCUIT**
COUNTY OF RICHLAND	)	
	)	C/A NO. 2020-CP-40-01934
STIVERS BROTHERS AUTOMOTIVE, INC.,	)	
	)	**PEACOCK AUTOMOTIVE AND**
Plaintiff,	)	**WARNER PEACOCK'S**
v.	)	**MEMORANDUM IN SUPPORT OF**
	)	**MOTION FOR PARTIAL**
W. WARNER PEACOCK and PEACOCK AUTOMOTIVE, LLC,	)	**SUMMARY JUDGMENT**
	)	
Defendants.	)	

INTRODUCTION

This is a case where the Plaintiff wants to have its cake and eat it too. Stivers agreed to sell its Chevrolet and Hyundai/Genesis dealerships to Peacock. Following the termination of the APAs by Peacock, Stivers chose to sell the Chevrolet store to a third party, at a profit, and to keep the Hyundai/Genesis stores, from which it has also profited greatly.

The law does not allow a Plaintiff to recover a windfall gain from an alleged breach of contract. It is entitled to recover only the damages it actually experienced, and benefits realized as the result of the alleged breach offset any damages. Further, a Plaintiff is required to mitigate its damages as a matter of law, which Plaintiff admits it did with the Chevrolet store.

The only reasonable inference a jury could make in the present case is that Plaintiff is not entitled to recover its alleged damages; either because they were experienced by another entity, are offset by the profits realized following the termination of the APAs, or are barred due to a failure to mitigate. Therefore, Partial Summary Judgment is appropriate in favor of the Defendants.

ELECTRONICALLY FILED - 2023 May 17 4:25 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

FACTUAL AND PROCEDURAL BACKGROUND

Stivers Brothers Automotive, Inc. and Peacock Automotive, LLC entered into two Asset Purchase Agreements (APAs) in January of 2020 for the purchase of Plaintiff's Chevrolet and Hyundai/Genesis dealerships in Columbia, South Carolina. Plaintiff (Stivers) represented it would operate the businesses as normal and preserve their goodwill until the time of closing.[1] It failed to do so[2] and failed to provide relevant financial information until Defendants (Peacock), in order to protect themselves, terminated the Agreements on March 27, 2020.

Peacock was immediately sued on April 13, 2020 for specific performance. It submitted signed APAs to Stivers on July 23, 2020, and then again on October 26, 2020, for the same price but better terms than the initial APAs. Stivers declined to accept these two APAs which would have completely avoided its alleged damages, attorneys' fees and costs.[3]

The Circuit Court initially denied Partial Summary Judgment a year and a half ago in a Form 4 Order which simply stated it was denied (November 12, 2021); but discovery has been ongoing, with Stivers producing over 4500 documents itemizing its alleged damages in its November 24, 2021 Third Supplemental Answers to Defendants' First Set of Interrogatories,[4] and producing the 68 page Report on Damages on May 2, 2023.

Stivers has had more than three years to prove its damages, and its Supplemental Discovery responses and Expert Report fail to provide evidence to defeat this second Motion for Partial Summary Judgment. In fact, the documents produced by Stivers after the first Motion demonstrate that: (1) Stivers sold the Chevrolet dealership in October of 2020 for $500,000 more

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[1] Hyundai APA §15, p. 15.

[2] Plaintiff's Expert Report prepared a year ago (but only produced on May 2, 2023) admits Stivers did not operate the business as normal:

> "In anticipation of the sale and leading up to an anticipated closing date, Stivers adjusted its operating business model to meet the requirements of a planned closing..."

Report on Damages, April 29, 2022, p. 3.

[3] Peacock's offers included sufficient funds to cover Stivers' attorneys' fees and costs.

[4] Ex. A

ELECTRONICALLY FILED - 2023 May 17 4:25 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

than the original APA price,[5] avoiding damages as to Chevrolet;[6] (2) realized $265,398 in operating net profits for the Chevrolet store for the period of April, 2020 – September, 2020;[7] (3) realized more than $5.8 million in net profits at the Hyundai/Genesis dealerships since April 2020 through March, 2022 that would not have been realized if the dealerships were purchased by Peacock in April of 2020; and (4) experienced a significant increase in the value of the Hyundai/Genesis dealerships.

Each of the categories of damages asserted by Stivers after the first Motion is either unrecoverable or fully offset by the principle of mitigation as a matter of law. Moreover, the majority of its alleged damages are costs actually incurred by other entities and which do not constitute damages because they represent the purchase of assets of equivalent value. Peacock, therefore, requests this Court to grant Partial Summary Judgment on the issue of damages.

STANDARD

Under Rule 56, *SCRCP*, summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Pittman v. Grand Strand Entm't, Inc.*, 363 S.C. 531, 536, 611 S.E. 2d 922, 925 (2005); *Eagle Container Co., LLC v. County of Newberry*, 366 S.C. 611, 619-620, 622 S.E. 2d 733, 737 (Ct. App. 2005). Summary Judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), *SCRCP*; *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 344, 338, 611 S.E. 2d 485, 487 (2005); *BPS, Inc. v. Worthy*, 362 S.C. 319, 324, 608 S.E. 2d 155, 158 (Ct. App. 2005).

[5] The amount of Stivers' Chevrolet sale was not disclosed until after the first Motion for Partial Summary Judgment.
[6] Ex. A. Plaintiff's Third Supplemental Answers to Defendants' First Interrogatories, which came months after the first Motion for Partial Summary Judgment.
[7] Ex. B, Affidavit of James F. Joyner (to be produced subject to Motion to Seal).

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When reasonable minds cannot differ on plain, palpable, and indisputable facts, summary judgment should be granted. *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E. 2d 817, 822 (Ct. App. 2004). Moreover, once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the non-moving party cannot simply rest on mere allegations or denials contained in the pleadings. *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E. 2d 432, 438 (Ct. App. 2003). The nonmoving party must come forward with specific facts showing there is a genuine issue for trial. *Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 220, 616 S.E.2d 722; 730 (Ct. App. 2005).

I. NEW EVIDENCE SUPPORTS THE MOTION FOR SUMMARY JUDGMENT

Peacock is not precluded from bringing a renewed motion for partial summary judgment based on new evidence.[8] "[I]f the first motion for summary judgment is unsuccessful the court has the power to permit a second motion for summary judgment prior to trial." *Dorrell v. South Carolina Dept. of Transp.*, 361 S.C. 312, 325, 605 S.E.2d 12 (2004) *citing Crosswell Enter., Inc. v. Arnold*, 309 S.C. 276, 279, 422 S.E.2d 157, 159 (Ct.App.1992).[9]

More than 4,000 pages of documents have been produced by Stivers since the March 23, 2021 hearing on Peacock's first Motion for Partial Summary Judgment. These include sales documents for the Chevrolet dealership and financial statements showing the profits made by the Hyundai/Genesis dealerships following the termination of the APAs. This evidence shows that Stivers voluntarily chose to sell its Chevrolet dealership for a profit of $500,000 more than the Peacock APA, and deliberately chose to retain its Hyundai/Genesis dealerships and realize the

[8] Additional discovery was conducted following Peacock's first Motion for Partial Summary Judgment filed over three years ago, and over 4,000 documents were produced for the first time along with a 68 page expert report. The Court took the Motion under advisement and after seven months issued a one word Form 4 Order. This Motion is based upon the new facts contained in the new answers to Discovery, along with the expert report.

[9] Peacock preserves its argument that the APAs limit Stivers' recovery to the $100,000 Escrow. For purposes of this renewed Partial Summary Judgment Motion, Peacock will address the new evidence produced since the first Motion was heard.

profits from those stores. *See Smith v. Breedlove*, 377 S.C. 415, 661 S.E.2d 67 (2008) (finding the circuit court did not err in hearing Breedlove's second motion for summary judgment although the legal basis of the motions were the same where discovery had taken place and new evidence had been established). A 68 page "Report on Damages" dated April 29, 2022 was produced a year later on May 2, 2023. Therefore, this second Motion is appropriate.

II. ANY DAMAGES STIVERS ALLEGES ARE COMPLETELY OFFSET BY ITS CONTINUED OPERATION OF THE HYUNDAI/GENESIS DEALERSHIPS OR ARE BARRED BY A FAILURE TO MITIGATE BY SELLING THE HYUNDAI/GENESIS STORES

Any damages claimed by Stivers must be offset either by any mitigation or reasonable mitigation efforts that were not taken.[10] Stivers may argue it is not required to offer the Hyundai/ Genesis dealerships for sale and has mitigated by retaining the dealerships and hiring a new General Manager. Taking this argument in the light most favorable to Stivers and finding that it has made efforts to mitigate, any damages it claims must be reduced by the substantial profits Stivers generated by retaining the Hyundai and Genesis dealerships. Even taken in the light most favorable to Stivers, these profits exceed the recoverable damages it can claim as a matter of law.[11]

Regardless of whether a jury were to find that Stivers failed to mitigate its damages by retaining the Hyundai/Genesis stores or that its retention was proper mitigation, there is no issue of material fact for the jury as to damages because the only reasonable inference from either conclusion is that Stivers suffered no damages as a result of the termination of the Hyundai/Genesis APA. ". . . [I]f the evidence is susceptible of only one reasonable inference, the question is no longer one for the jury but one of law for the Court." *Hancock v. Mid-South Management, Co.*,

[10] Stivers admits their duty to mitigate with their sale of the Chevrolet store and admit they mitigated their damages as to the Chevrolet APA. (Ex. A).

[11] Stivers has recently identified an expert witness, who opines that the damages incurred by Stivers as a result of the termination of the APAs is $2,300.000 as of March 30, 2020. This is offset by Stivers' $5.8 million in profits realized as a result of retaining the dealership.

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Inc., 370 S.C. 131, 634 S.E.2d 12, 14 (Ct. App. 2006) *quoting Ward v. Zelinski*, 260 S.C. 229, 232, 195 S.E.2d 385, 387 (1973).

A. Stivers' Alleged Damages are Offset by it Profits and Increased Value

Stivers' choice to retain the Hyundai/Genesis dealerships indicates that it was more profitable to retain the dealerships than to sell them. Even taking Stivers' claimed $2.3 million loss as a result of the termination of the APAs as of March 30, 2020 in the light most favorable to Stivers, the net profits it has earned since the termination of the APAs and the increase in the value of the dealerships completely avoided any damages sought.

Stivers has profited as a result of retaining the Hyundai/Genesis dealerships. Any damages it claims as a result of the termination of the APAs must be offset by the benefits it received as a result. *See South Carolina Fin. Corp. v. West Side Fin. Co.*, 236 S.C. 109, 113 S.E.2d 329 (1960) (the proper measure of damages for breach of contract is the loss actually suffered as the result of the breach).[12]

The traditional damages remedy under contract law is compensatory in nature. Restatement (Second) of Contracts § 347 (1981). Stated another way:

> The fundamental principle that underlies the availability of contract damages is that of compensation. That is, the disappointed promisee is generally entitled to an award of money damages in an amount reasonably calculated to make him or her whole and neither more nor less; any greater sum operates to punish the breaching promisor and results in an unwarranted windfall to the promisee, while any lesser sum rewards the promisor for his or her wrongful act in breaching the contract and fails to provide the promisee with the benefit of the bargain he or she made.

24 Samuel Williston & Richard A. Lord, *Williston on Contracts* § 64:1 (4th ed. 2020); *see also* 11 Joseph M. Perillo & Helen Hadjiyannakis Bender, *Corbin on Contracts* § 55.3 (2020) ("[I]t is a

[12] Stivers has alleged causes of action for breach of contract, breach of contract accompanied by a fraudulent act, and tortious interference with contractual relations. An action for breach of contract accompanied by a fraudulent act is an action in contract. *Peeples v. Orkin Exterminating Company, Inc*., 244 S.C. 173, 135 S.E.2d 845 (1964).

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basic tenet of contract law that the aggrieved party will not be placed in a better position than it would have occupied had the contract been fully performed."); 22 Am. Jur.2d Damages § 45 (limiting a party's recovery in a breach of contract action to "the loss that he has actually suffered by reason of the breach").[13]

A related principle is that, when the non-breaching party indirectly benefits from the defendant's breach, "in order to avoid overcompensating the promisee, any savings realized by the plaintiff as a result of the ... breach ... must be deducted from the recovery." 24 *Williston on Contracts* § 64:3; *see also DPJ Co. P'ship v. F.D.I.C.* , 30 F.3d 247, 250 (1st Cir. 1994) (holding that, with respect to reliance damages for breach of contract, "a 'deduction' is appropriate 'for any benefit received [by the claimant] for salvage or otherwise' " (alteration in original) (quoting A. Farnsworth, *Contracts* § 12.16 (2d ed. 1990))).

As Professor McCormick explains:

> Where the defendant's wrong or breach of contract has not only caused damage, but has also conferred a benefit upon plaintiff ... which he would not otherwise have reaped, the value of this benefit must be credited to defendant in assessing the damage.

Charles T. McCormick, Handbook on the Law of Damages 146 (1935).[14]

Stivers is asking to be placed in a superior position than it would have been in had the purchase taken place. This is not allowed. "A non-breaching party is not entitled, through the award of damages, to achieve a position superior to the one it would reasonably have occupied had

[13] *See Crossman Communities of North Carolina, Inc. v. Harleysville Mut. Ins. Co.*, No. 4:09-cv-1379-RBH, 2013 WL 5437712, at *27 (D.S.C. Sept. 27, 2013) (finding that applying the collateral source rule to contract law would contravene the principle that contractual damages are measured by the amount that the non-breaching party would have received if the contract had been performed as promised by awarding the non-breaching party more damages than necessary to compensate it for the breach.).

[14] *See Lasalle v. Talman Bank*, F.S.B. v. US, 317 F.3d 1363, 1371 (Fed. Cir. 2009) (quoting Professor McCormick. *See also Old Stone Corp. v. U.S.*, 450 F.3d 1360, 1378 (Fed. Cir. 2006) (holding non-breaching party should not be placed in a better position through the award of damages than if there had been no breach).

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the breach not occurred." (citing 3 E. Allen Farnsworth, Farnsworth on Contracts 193 (2d ed. 1998)). *LaSalle Talman Bank, F.S.B. v. United States,* 317 F.3d 1363, 1371 (Fed.Cir.2003)

The LaSalle Talman Bank appealed the judgment of the United States Court of Federal Claims finding the government liable for breach of contract following enactment and implementation of FIRREA but rejecting LaSalle's claim for damages other than expenses incurred in connection with the FIRREA-forced sale of LaSalle's predecessor bank. The Federal Circuit Court affirmed the lower court's ruling that damages due to the breach are subject to offset or mitigation by the benefits of the actions taken after the breach stating, "where the defendant's wrong or breach of contract has not only caused damage, but has also conferred a benefit upon plaintiff which he would not otherwise have reaped, the value of this benefit must be credited to defendant in assessing the damages." *LaSalle,* 317 F.3d at 1372 (quoting Charles T. McCormick, Handbook on the Law of Damages 146 (1935)).

Similarly, in *Community Health Choice, Inc. v. United States*, 970 F.3d 1364 (Fed.Cir. 2020), while the Federal Circuit found the federal government was liable when it ceased payment to insurers of cost-sharing reduction reimbursements under the Affordable Care Act, it remanded the case to the Claims Court to reduce the insurers' damages by the amount of additional premium tax credit payments that each insurer received from the states as a result. The Federal Circuit noted that courts have uniformly held that a plaintiff suing for breach of contract is not entitled to a windfall, i.e., the non-breaching party "[i]s not entitled to be put in a better position by the recovery than if the [breaching party] had fully performed the contract." *Id.* at 1375 citing *Miller v. Robertson*, 266 U.S. 243, 260 (1924).

Any damages claimed by Stivers must, therefore, be reduced by the profits it realized as a result of the termination of the APAs, and the increased value of its dealerships.

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1. Plaintiff had a Net Gain from the Dealerships

Stivers received a benefit by retaining the Hyundai and Genesis franchises. From April, 2020 through March, 2022, Stivers realized in excess of $5.8 million in net profits from the operation of the Columbia Hyundai and Genesis franchises and continues to realize profits.[15] Stivers also realized $265,398 operating net profits for the Chevrolet store for the period of April, 2020 – September, 2020.[16]

2. The Hyundai/Genesis Franchises Increased in Value

The value of Stivers' Columbia Hyundai/Genesis franchises increased substantially, resulting in a multi-million dollar financial gain to Stivers by retaining the Columbia franchises past April 2020 in excess of any recoverable damages it may claim. [17]

Stivers would have received $3.5 million for the Hyundai/Genesis dealerships if the APAs had not been terminated. Following their termination, Stivers sold Chevrolet to Jim Hudson in October of 2020 for $4 million, a $500,000 gain over the original $3.5 million APA price.[18] Stivers agrees that this sale mitigated any damages related to the APA sales price. (Ex. A)

The Haig Report, a widely used industry guide for determining the value of a dealership's blue sky, lists a multiplier to be applied to the dealership's adjusted profits to determine the blue sky value. The multiplier for Hyundai/Genesis dealerships was 3-3.5 of annual net profits in the fourth quarter of 2019[19] (the APAs were executed January 7, 2020). The multiplier rose to 3.75-4.75 by the third quarter of 2021.[20] The value of dealerships in Stivers' market increased, as shown

[15] Ex. B, Affidavit of James F. Joyner (to be produced subject to Motion to Seal). Plaintiff additionally earned off-statement profits related to sales of warranty products.
[16] Ex. B, Affidavit of James F. Joyner (to be produced subject to Motion to Seal).
[17] Peacock sold its comparable Hyundai/Genesis dealerships in September, 2021 for substantially more than the original APA price. See Affidavits of John M. Brennan, Ex. C and James F. Joyner, Ex. B (to be produced subject to Motion to Seal). Industry publications additionally report an increased multiplier to be used for evaluating the goodwill value of these franchises. (Ex. D).
[18] Ex. E, APA (disclosed after the first Motion)
[19] Ex. F, Haig Report Q4 2019, p. 21.
[20] Ex. G, Haig Report Q3 2021, p. 19.

by the increased sales price of the Chevrolet franchise and the sales price of a comparable Hyundai/Genesis franchises in 2021. The value of Stivers' Hyundai/Genesis dealerships would have increased to $6.125-7.875 million following the termination of the APA even if Stivers did not experience an exponential increase in profits. Stivers' realized net profits means it experienced an even greater increase in blue sky value.

Professor Michael B. Kelly notes:

> The law attributes the market price to the seller not because she *could have* realized that value by reasonable efforts to sell the goods, but because she *did* realize that value by retaining the goods. The goods are valuable; retaining them is a benefit. The plaintiff, thus, has received an actual benefit from the breach, not merely an opportunity to reduce the loss. The expectation interest requires an offset for the value of that benefit.[21]

Thus, Stivers has realized a total economic benefit from the termination of the APAs, not only because it has retained an asset of value, but also because it has realized net profits in excess of the amount it would have been paid for the franchises in 2020.

Any damages otherwise available to Stivers must be reduced by the benefits it has received in retaining the dealerships. The fact Stivers did not sell was its own voluntary and intentional decision, but its profits and the significant increase in the value of its asset makes any further recovery inequitable. Because these undisputed benefits far exceed the $2.3 million its expert claims as a result of the termination of the APAs, Stivers has suffered no damages as a matter of law.

[21] Michael B. Kelly, *Living Without the Avoidable Consequences Doctrine in Contract Remedies,* 33 SAN DIEGO L. Rev. 175, 190 (1996).

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B. Mitigation was available by Selling the Hyundai/Genesis Dealerships and any Recovery is Reduced by the Avoidable Costs

1. Mitigation was available by selling the Hyundai/Genesis dealerships

It is undisputed that Stivers had an opportunity to offset its claimed damages by selling the Hyundai/Genesis Dealerships either to Peacock, when offered, or to a third party. "It is the undoubted general rule that it is the duty of the owner of the property, which is injured by the negligence of another, to use reasonable means to minimize the damages." *Newman v. Brown,* 228 S.C. 472, 480, 90 S.E.2d 649, 653 (1955). "The duty to mitigate losses applies to contracts." *Cisson Constr., Inc. v. Reynolds & Assocs., Inc.*, 311 S.C. 499, 503, 429 S.E.2d 847, 849 (Ct.App.1993).

Stivers admits that it has completely mitigated its damages as to the Chevrolet APA.[22] Stivers could have sold the Hyundai/Genesis dealerships, as it did with Chevrolet, and avoided its claimed damages. Peacock offered to purchase the Hyundai/Genesis dealership on better terms on three separate occasions.[23] Stivers refused[24] and made no efforts to list the Hyundai/Genesis dealerships for sale.

Stivers' argument that it no longer trusted Peacock provides no excuse for its failure to offer the Hyundai/Genesis dealerships for sale to another party. The market for sales of dealerships has reached a record high during this period of time. (Ex. G). Industry reports, Stivers' sale of the Chevrolet dealership, as well as Peacock's sale of its own Hyundai/Genesis dealerships in

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[22] Ex. A.

[23] Stivers claims that Peacock's offer was not legitimate and that it became exasperated with the attempt. It still had a duty to pursue an opportunity to avoid its alleged damages. In *Schiavi Mobile Homes, Inc. v. Gironda*, 463 A.2d 722 (Me. 1983), the Supreme Judicial Court of Maine found:

> . . the duty to mitigate is more than just a duty to accept legally enforceable offers. Upon learning of the Defendants' breach, the Plaintiff was obligated to take reasonable affirmative measures to keep its losses to a minimum. Palmer's conversation with Frank Gironda, Sr., in September, 1979, revealed that he had a party willing to pay the full price of the mobile home. Regardless of whether the father actually made a valid "offer," the retailer had a duty to pursue this opportunity to minimize the effects of the breach. Instead, the Plaintiff waited another two months and then sold the home for $1,028.69 less than Frank Gironda, Sr., was willing to pay.

[24] Ex. H, Plaintiff's Supplemental Responses to Defendants' Second Request to Admit

Columbia,[25] are evidence that sales were possible for more than the original APA. Peacock sold its Hyundai/Genesis dealerships for substantially more than Stivers would have received had the APA been finalized.

In *Barron G. Collier, Inc. v. Women's Garment Store, Inc*., 189 N.W. 403 (Minn. 1922), Women's Garment Store (WGS) contracted with Collier to carry its advertisements in a designated space in Minneapolis. WGS sold its store and cancelled its contract with Collier, in breach of its agreement. Collier was able find four firms willing to take WGS's contract for a more favorable price than being paid by WGS. Collier delayed renting the space for three months, and then chose to rent to another customer who cancelled a different contract with it to rent the space at a lower price than WGS was to pay. The Minnesota Supreme Court found:

> In such case the rule of law clearly is that if, by reasonable diligence, another unobjectionable customer can be found who will take the same space at as favorable a price, there is no damage and no action can be maintained. In this case four other unobjectionable customers stood ready to take the same space contracted for by [WGS] and at a higher price. [WGS's] breach caused plaintiff no damage but gave an opportunity for profit. [WGS] simply gave up an advantageous contract. It was a piece of good fortune to [Collier] that [WGS] breached the contract. The fact that [Collier] delayed three months in availing itself of a new contract and then rented the space to a customer who canceled other space to accept it was [Collier's] own affair. It might have rented the space upon cancellation of the contract and from [WGS's] standpoint the delay was unreasonable.

Id. at 477.

The Supreme Court of New Hampshire affirmed a trial court's finding that plaintiff failed to mitigate damages as a matter of law in an action for breach of a mortgage financing contract. *Millimet v. First Federal Sav. and Loan Ass'n of Lowell*, 533 A.2d 328 (N.H. 1987). The trial court found that if the plaintiff had "reasonably moved to purchase the funds within a reasonable time, there would have been no damages except for the special expenses incurred as a result of the

[25] Ex. C, Affidavit of John M. Brennan, ¶7 (to be produced subject to Motion to Seal).

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breach." The New Hampshire Supreme Court went on to rule that "[t]he plaintiffs' failure [even to] attempt to secure a similar loan at the time of the breach[ ] is, as a matter of law, failure to mitigate . . . ." *Id.* at 328. Likewise, Stivers' failure to attempt a sale of the dealerships is, as a matter of law, failure to mitigate.

In the present case, Stivers had three opportunities to sell the Hyundai/Genesis dealerships on better terms and to recover Stivers' attorney's fees and costs. Even if a jury were to question the integrity of Peacock's offer, Stivers did not attempt to sell the Hyundai/Genesis stores to anyone, and it is undisputed that the stores have increased in value. Even after it extended its lease agreement in June for another two years, Peacock offered to assume the lease.[26] Peacock also offered to increase the Escrow Deposit to $500,000, pay the purchase price in cash, and reimburse Stivers' attorneys' fees and costs.[27]

2. Plaintiff continued to incur costs that could have been avoided

Generally, a party cannot recover damages for losses that could have been avoided by reasonable efforts. Restatement (Second) of Contracts § 350.[28] Once a party has reason to know the other party will not be performing its obligations under the contract, the non-breaching party is ordinarily expected to stop its own performance to avoid further expenditure. *Id.*

Not only did Stivers make no efforts to avoid the damages it claims, it is alleging additional costs incurred by other entities for the voluntary purchase of land and construction of two separate

[26] Ex. H, Response to #9

[27] Ex. I, Affidavit of J. Gregory Humphries.

[28] cmt. b. . . . It is sometimes said that it is the "duty" of the aggrieved party to mitigate damages, but this is misleading because he incurs no liability for his failure to act. The amount of loss that he could reasonably have avoided by stopping performance, making substitute arrangements or otherwise is simply subtracted from the amount that would otherwise have been recoverable as damages.

The market for resale was available in Columbia. Stivers was able to enter into an agreement to resell the Chevrolet store almost immediately. The Haig Report noted the increase in sales of Hyundai/Genesis dealerships in 2020 and Peacock sold its own Hyundai/Genesis dealerships in Columbia for more than the Stivers APA price.

car dealerships in an attempt to increase the value of the dealerships in excess of the value at the time of the contract.

Because these costs were avoidable, Stivers is barred from recovering them as damages as a matter of law. *See Rockingham County v. Luten Bridge Co.*, 35 F.2d 301(4th Cir. 1929) (recognizing that where a defendant requested a plaintiff to stop construction of a bridge in violation of their agreement, the plaintiff was entitled to the damages he sustained up to the request, but had no right to complete the work to make the penalty upon the defendant greater than it would otherwise have been.). See also e.g., *Moon v. Wash.-Beaufort Land Co*, 133 S.E. 498 (Special Ct. App Va. 1926) ("If a fruit grower were to purchase from a nurseryman high grade apple trees and there was delivered to him trees worthless in kind and stock, he could not, with full knowledge, plant, cultivate, and care for them for years and then sue for consequential damages because his orchard failed to produce abundantly Albemarle Pippins.")

III. STIVERS IS CLAIMING DAMAGES IT DID NOT INCUR

Stivers is claiming damages it has not incurred.[29] Stivers cannot recover for costs incurred by another entity as a matter of law. *See Sossamon v. Nationwide Mut. Ins. Co.*, 243 S.C. 552, 135 S.E.2d 87 (1964) (finding a husband could not recover for damage to the station wagon owned by his wife.).[30]

Stivers chose to create separate and distinct corporate entities to operate their businesses. If one of these entities was sued, Stivers would not likely suggest they were interdependent and the assets of all the entities available for damages. Along with the advantages of doing business as

[29] Ex. A Stivers' Third Supplemental Answers to Interrogatories, Number 10 served November 24, 2021.

[30] "Actual damages are damages in satisfaction of, or in recompense for, loss or injury sustained." *Barnwell v. Barber-Colman Co.*, 301 S.C. 534, 393 S.E.2d 162 (1989). Additionally, Stivers contractually agreed that indirect, special, and punitive damages were unrecoverable (¶24(e)(3), Hyundai/Genesis APA). The South Carolina Supreme Court held a similar limitation of liability clause was not contrary to public policy and that its enforcement would not be unconscionable. *Maybank v. BB&T Corp.*, 416 S.C. 541, 576, 787 S.E.2d 498, 516 (2016).

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separate corporate entities, these entities also are bound by the disadvantages of forming separate corporations. *See Terry v. Yancey*, 344 F.2d 789, 790 (4th Cir.1965) (stating "where an individual creates a corporation as a means of carrying out his business purposes he may not ignore the existence of the corporation in order to avoid its disadvantages").

Stivers claims damages in the form of additional rent, property taxes, and insurance under its sublease following the termination of the APAs; however, Stivers Realty, LC, not Stivers Brothers Automotive, Inc., is the party to the lease.[31] Likewise, Stivers Realty, not the Plaintiff, purchased the property to which Stivers is relocating the Hyundai and Genesis dealerships[32] and is the entity indebted on the mortgage for construction of the new facilities.[33] Stivers Hyundai shows no liabilities for mortgage or rent and a single line item for long term liabilities. (Ex. M) Stivers Genesis shows no long term debt. (Ex. N). Additionally, Hyundai and Genesis show substantial profits in excess of $5.8 million following the termination of the APAs, which would offset any long term liabilities. (Exs. M, N, O, and Affidavit of James F. Joyner, Ex. B).

There is no evidence that Stivers incurred acquisition costs for the purchase of another dealership. In fact, the documents produced show that E.M. Stivers, Inc., and not Plaintiff, purchased the dealership. (Ex. P, Asset Purchase Agreement).

As a matter of law, Stivers is not entitled to recover for damages it did not incur.[34]

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[31] Plaintiff has produced a Commercial Insurance Policy with Stivers Ford Lincoln, Inc. as the insured, and not Stivers Brothers Automotive, Inc. (Ex. J); Plaintiff has additionally produced a Sublease Agreement in which Stivers Realty, LC is responsible for the lease payments, not Plaintiff, Stivers Brothers Automotive, Inc. Ex. K.

[32] Ex. L. Stivers Realty is now the owner of the property to which Stivers relocated.

[33] Ex. Q. Further, Stivers Realty has received equivalent value for the price it paid and, therefore, has suffered no damages.

[34] Stivers is also claiming losses on the "liquidation of used vehicles, service loaners, demonstrators, and damaged vehicles" despite the fact Peacock was not obligated to purchase any used vehicles or demonstrators under the APAs. (Hyundai APA ¶ 1(b), p. 3). Stivers has presented no evidence regarding losses related to damaged vehicles. It had the use of the service loaners and demonstrators in its fleet and was able to profit from the sale of any vehicles in its inventory.

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IV. STIVERS IS ONLY ENTITLED TO BE PLACED IN THE SAME POSITION IT WOULD HAVE BEEN IN IF PEACOCK PURCHASED THE HYUNDAI/GENESIS DEALERSHIPS

Stivers wants to retain the Hyundai/Genesis dealerships and all the profits realized from their operation and also recover from Peacock the money it would have received had the dealerships been sold. This would result in an improper windfall for Stivers. It is only entitled to be placed in the position it would have been in had the contract been performed. See *Drews Co. v. Ledwith-Wolfe Assocs., Inc.*, 296 S.C. 207, 371 S.E.2d 532 (1988). As a general rule, "[a] non-breaching party is not entitled, through the award of damages, to achieve a position superior to the one it would reasonably have occupied had the breach not occurred." *LaSalle Talman Bank, F.S.B. v. United States*, 317 F.3d 1363, 1371 (Fed.Cir.2003) (citing 3 E. Allen Farnsworth, Farnsworth on Contracts 193 (2d ed. 1998)). It has long been held that "one man's default should not lead to another man's unjust enrichment." *Priebe Sons v. United States*, 332 U.S. 407, 418 (1947).

Stivers' contract was for the sale of the Hyundai/Genesis dealerships under a single roofline at the Newland Road address. As a matter of law, it is not entitled to have Peacock pay for it to move and construct two new dealerships.

V. THE DAMAGES CLAIMED BY STIVERS DO NOT FLOW AS A NATURAL CONSEQUENCE AND AS A PROXIMATE RESULT OF ANY ALLEGED BREACH OF THE HYUNDAI/GENESIS APA

The general rule is that for a breach of contract, the breaching party is liable for whatever damages follow as a natural consequence and a proximate result of such breach. *Johnson v. Little*, 426 S.C. 423, 428, 827 S.E.2d 207, 210 (Ct. App. 2019). A party proves damages by showing an actual loss that would not have been incurred but for the defendant's breach of the contract. *Drews Co. v. Ledwith-Wolfe Assocs.*, 296 S.C. 207, 213, 371 S.E.2d 532, 535 (1988). Not only are these

not costs incurred by Stivers, they do not flow naturally from the termination of the Hyundai/Genesis APA.

Stivers is relocating based on a decision that its new location is more desirable and that the incentives available from the manufacturers for the new facilities will offset the building costs.[35] These business decisions would not be needed if Stivers sold the dealerships to Peacock. The alleged costs are based on Stivers' decision that such actions would make the dealerships more profitable, not as a consequence or proximate result of a breach.

The case of *Lifschultz Fast Freight, Inc. v. Haynsworth, Marion, McKay & Guerard*, 324 S.C. 645, 486 S.E.2d 14, (Ct. App. 1997) (overruled on other grounds) is instructive. Lifschultz was represented in a lawsuit by the Haynsworth law firm and by William J. Quirk, who was of counsel with the firm of McKay & Guerard. Representation was taken on a 25% contingent fee. The Haynsworth firm was later allowed to withdraw from the case on the grounds that it could no longer work with Quirk. Following the withdrawal of the Haynsworth firm, Lifschultz renegotiated its fee arrangement with Quirk for an hourly rate and a reduced contingency fee. Lifschultz eventually lost the case on summary judgment but claimed that Haynsworth's withdrawal caused it to hire counsel at an hourly rate.

The South Carolina Court of Appeals found, however, that Lifschultz independently made the gamble to switch its fee structure on the belief that it would be financially more beneficial, had Lifschultz won. The Court found that it was Lifschultz's own decision to renegotiate and not the withdrawal of the Haynsworth firm that caused it to incur the hourly fees. Likewise, Stivers' decision to buy land, move its dealerships, and build new facilities were its own financial decision, and not caused by any alleged breach by Peacock.

[35] Ex. R.

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Other courts have made similar findings. In *Assouline Ritz LLC v. Edward I. Mills & Assocs*., 91 A.D.3d 473 (N.Y. App. Div. 2012) the architectural firm to be purchased advised that the zoning law would permit the addition of six new stories to the building, Assouline Ritz therefore agreed to purchase the property. After the purchase, the Department of Buildings objected on the ground that the City's Zoning Resolution in fact did not permit the addition of six stories to the existing building. Assouline Ritz decided to go forward with a new plan to demolish the existing five-story building completely and replace it with a new 11–story building. The New York Supreme Court found that Assouline Ritz's decision to continue to hold the property and to pursue an alternative plan for redeveloping could not be deemed an attempt to mitigate the damages caused by the defendant's negligence. Instead, it held it was an attempt to realize the anticipated benefit of the original plan through other means. The New York court further found these voluntarily incurred expenses could not be deemed to have been proximately caused by the defendant's negligence. *Assouline, supra.*

Similarly, the cost of relocating the Hyundai/Genesis dealerships were not caused by any alleged breach of the APAs; rather they were the calculated decision of Stivers that the relocation would be more profitable. These costs are therefore not recoverable by Stivers.

CONCLUSION

A rising tide lifts all boats. Stivers has benefitted from the termination of the Hyundai/Genesis APA as it has realized an increase in the value of these franchises and has realized substantial net profits since April of 2020. Whether a jury were to determine that Stivers has failed to mitigate its damages by failing to sell the Hyundai/Genesis franchises or that it did mitigate by retaining a valuable asset and continuing to operate, any damages Stivers could claim are completely offset as a matter of law and partial summary judgment is appropriate in favor of Peacock.

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May 17, 2023

Respectfully submitted,

s/Bradford N. Martin
Bradford N. Martin, Esq. (SC Bar No. 3658)
Laura W. H. Teer, Esq. (SC Bar No. 16698)
BRADFORD NEAL MARTIN & ASSOCIATES, PA
Post Office Box 10410
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ATTORNEYS FOR DEFENDANTS
PEACOCK AUTOMOTIVE, LLC AND
W. WARNER PEACOCK

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CASE NO. 2020-CP-40-01934
	)	
STIVERS BROTHERS AUTOMOTIVE, INC.,	)	
	)	**PLAINTIFF'S THIRD SUPPLEMENTAL ANSWERS TO DEFENDANTS' FIRST SET OF INTERROGATORIES**
Plaintiff,	)	
	)	
v.	)	
	)	
W. WARNER PEACOCK and PEACOCK AUTMOTIVE, LLC,	)	
	)	
Defendants.	)	
	)	

TO: BRADFORD N. MARTIN, ESQ., ATTORNEY FOR DEFENDANTS

The Plaintiff, by and through its attorneys, hereby supplements its answers to Defendants' First Set of Interrogatories as follows:

10. State with specificity the damages you are claiming as a result of the allegations contained in the complaint. For each item of damages listed, set forth method used to calculate such damages.

ANSWER

At a minimum, the Plaintiff claims liquidated damages of $100,000.00 as provided by paragraph 20(d) of the Chevrolet APA and paragraph 20 of the Hyundai APA.

Because the APAs were executory contracts where the time for delivery was dependent upon several affirmative actions of the buyer, Peacock Automotive (i.e. obtaining manufacturer approval, entering an assignment of lease, etc.), the Plaintiff's damages arising from the breach of the Hyundai/Genesis APA is the difference between the contract price and the fair market value of the assets on the date of the breach. The Plaintiff will present the opinion testimony of Edward Stivers that the difference on the date of the breach was $3,500,000.00. The Plaintiff sold the Chevrolet assets to Jim Hudson Automotive Group and has mitigated its damages as to the Chevrolet APA.

The Plaintiff suffered losses in anticipation of closing, including but not limited to losses on the liquidation of used vehicles, service loaners, demonstrators, and damages vehicles. The Plaintiff will supplement this category of damages when these sums are determined.

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The Plaintiff has suffered additional damages, including the payment of additional rent ($1,253,520.84 per annum, payable in monthly installments of $104,460.07), annual property taxes ($173,865.25), and insurance premiums ($117,951.69 per annum) owed under the lease between the date of the breach and October 5, 2020, the date when the Plaintiff closed on the sale of the Chevrolet assets to Jim Hudson Automotive Group. Once Jim Hudson Automotive Group assumed the lease for 111 Newland Road per the terms of the Asset Purchase Agreement, the Plaintiff's monthly rent was reduced to $40,000.00, and a prorated share of the total property taxes and insurance.

In order to preserve the value of its Hyundai/Genesis franchise, the Plaintiff has also been required to purchase real estate at a cost of $2,200,000.00, enter into a construction contract for $12,000,000.00 to build a facility, and to spend $1,100,000.00 on equipment and $600,000.00 on furnishings.

Finally, the Plaintiff suffered approximately $300,000.00 in consequential damages for the increased acquisition cost of another dealership occasioned by Peacock Automotive's breach.

11. List each and every lawsuit you have been involved or a party to, including the caption of the lawsuit, nature of the lawsuit, date filed, the court in which it was filed, and the disposition for the last (10) years.

ANSWER

Madonna Reed v. Stivers Chevrolet
C.A. No.: 2019-CV-40-10900640
Nature: Breach of Contract
Filed: 4/25/2019
Pontiac Magistrate
Disposition: Settled

Stivers Brothers Automotive, Inc. v. Albert L. Brown
C.A. No. 2019-CP-40-05773
Nature: Breach of Warranty of Title
Filed: 5/24/2019
Richland County Court of Common Pleas
Disposition: Pending

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Ruthena Barcus v. Stivers Brothers Automotive, Inc.
C.A. No. 2019-CV-40-10901074
Nature: Contract Dispute
Filed: 7/9/2019
Pontiac Magistrate
Disposition: Settled

Derrick Bright v. Stivers Chevrolet
C.A. No.: 2019-CV-40-10901731
Nature: Contract Dispute
Filed: 10/17/2019
Pontiac Magistrate
Disposition: Dismissed

Stivers Brothers Automotive, Inc. v. Peacock Automotive, LLC and W. Warner Peacock
C.A. No. 2020-CP-40-01934
Nature: Declaratory Judgment, Breach of Contract, Breach of Contract Accompanied by a Fraudulent Act, Violation of the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act, Tortious Interference, Corporate Veil Piercing
Filed: 4/13/2020
Richland County Court of Common Pleas
Disposition: Pending

Signature appears on the following page.

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STUDEMEYER LAW FIRM, P.C.

/s/ Ryan G. Studemeyer

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J. Michael Baxley
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Attorneys for the Plaintiff

Irmo, South Carolina

November 24, 2021

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

STIVERS BROTHERS AUTOMOTIVE, INC.,

Plaintiff,

v.

W. WARNER PEACOCK and PEACOCK AUTOMOTIVE, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A NO. 2020-CP-40-01934

AFFIDAVIT OF JAMES F. JOYNER, III, CPA, CVA/ABV, CPC, AIFA, CRM, CPVA

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

BEFORE ME, the undersigned authority, this day personally appeared JAMES F. JOYNER, III, CPA, CVA/ABV, CPC, AIFA, CRM, CPVA, who, being first duly sworn, deposes and says:

Background

1. I am James F. Joyner, III. I am the Managing Member of Integra Valuation Consulting, LLC in Spartanburg, South Carolina. I am also the Managing Member of the J.F. Joyner III CPA Firm.

2. Integra Valuation Consulting, LLC offers a variety of valuation services, including the valuation of automobile dealerships. J.F. Joyner III CPA Firm is a public accounting firm in Spartanburg, South Carolina providing accounting and tax services to individual and business clients, including automobile dealerships.

3. I have personal knowledge of the matters set forth herein except where I have indicated my belief based on known facts.

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4. I graduated from Bob Jones University with a Bachelor of Science degree in Accounting.

5. I have been a certified public accountant since 1982, and a valuation analyst for privately owned businesses since 1989. I am certified as a public accountant in South Carolina, North Carolina and Georgia. I have provided tax and accounting services to closely held businesses, including automobile dealerships, for over 40 years. Since 2005, I have served as an independent trustee or financial advisor for over 100 ESOPs.

6. I am Accredited in Business Valuation (ABV), a Certified Valuation Analyst (CVA), a Certified Pension Consultant (CPC), an Accredited Investment Fiduciary Auditor ® (AIFA ®), Certified in Risk Management (CRM), Certified ESOP Administrator, and Certified Patent Valuation Analysis (CPVA).

7. I have approximately 30 years of experience conducting business valuations and litigation support services, including the valuation of automobile dealerships.

8. I am a member of the American Institute of CPAs, the South Carolina Association of CPAs, American Society of Appraisers, American Society of Pension Professionals & Actuaries, and ESOP Association, where I have served on the Fiduciary Committee and the Legislative and Regulatory Committee.

9. My professional experience includes business valuation and appraisals, accounting, auditing and tax services to closely-held businesses; third party administration services to qualified retirement plans, including ESOPs; retirement plan and employee benefit plan consulting; independent ESOP trustee appointments; and valuations and fairness opinions for business transactions under $100 million.

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10. I have been requested to review this case and have formed the following opinions concerning (1) whether the Plaintiff, Stivers Brothers Automotive, Inc. ("Stivers Brothers Automotive"), suffered any provable damages or actually benefitted financially from the termination of the Columbia Hyundai/Genesis and Chevrolet APAs on March 30, 2020, at issue in this case; and (2) whether Stivers Brothers Automotive fully mitigated or failed to mitigate its damages in this case.

Summary of Opinions

11. The Columbia Chevrolet and Hyundai/Genesis APAs each had a franchise goodwill price of $3.5 million for a total of $7 million under the APAs signed January 7, 2020.

12. The APAs were terminated on March 30, 2020.

13. Stivers Brothers Automotive sold the Columbia Chevrolet franchise to Jim Hudson in October, 2020 for $4 million, a $500,000 gain over the $3.5 million APA price for the Chevrolet franchise with Peacock Automotive. Additionally, Stivers Brothers Automotive has realized $265,398 in operating profits from the operation of the Chevrolet franchise in Columbia, South Carolina from April of 2020 until the sale of the franchise to Jim Hudson in October of 2020.

14. In the Stivers Brothers Automotive Memorandum in Opposition to Defendants' Motion to Compel filed on June 11, 2021 (approximately 14 months after the Stivers Brothers Automotive lawsuit was filed), at page 13, Stivers Brothers Automotive concedes that it has no actual damages relating to the alleged breach of the Columbia Chevrolet APA.

15. After the APA termination, Stivers Brothers Automotive retained the Columbia Hyundai/Genesis Columbia franchise. From April, 2020 through March, 2022, Stivers Brothers Automotive has realized $5,893,886 in net operating profits from the operation of the

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Hyundai/Genesis franchise in Columbia, South Carolina as reported in the Stivers Brothers Automotive monthly financial statements to Hyundai/Genesis.

16. I have reviewed the affidavit of Edward M. Stivers, III filed with the Court on September 17, 2021. $3.5 million is the gross contract price for franchise goodwill under the Hyundai/Genesis Columbia APA between Peacock Automotive and Stivers Brothers Automotive. There is sufficient public information about the buyer and the seller to justifiably assume that both are well informed about (a) the new car dealer industry, (b) dealership operations, and (c) dealership valuations. My financial analysis of this Hyundai/Genesis dealership confirms that the contract price was a rational and supportable value at the end of 2019 and through the first half of 2020. There is no support for the proposition that the Hyundai/Genesis Columbia franchise had zero value on March 30, 2020, as contended by Stivers Brothers Automotive.

17. Sales of comparable businesses are a good indicator of a business's fair market value. As a franchise in the same market area with comparable sales, Peacock Automotive closed the sale of its Columbia Hyundai/Genesis franchise to AutoNation in September, 2021 for $[redacted] million. This transaction value is consistent with the current market conditions.

18. Publications and databases are widely available that collect transactional information and discuss market conditions for buying and selling new car dealerships. The value of a new car dealership in excess of working capital (current assets minus current liabilities) and fixed assets is commonly referred to as "blue sky" or "blue sky money." Blue sky is a term that aggregates the discrete values of the dealership's intangible assets (e.g., goodwill, customer lists, trained workforce, and etc.) and the franchise agreement to sell cars of a car manufacturer. The catch-all accounting term is "goodwill." Transaction volume and price metrics (i.e., blue sky

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multiples) are of primary importance to new car dealership owners and the valuation professionals who advise them.

19. Blue sky, or goodwill, value of automobile franchises has increased since March of 2020 according to leading industry reports.

20. The Kerrigan Quarterly Blue Sky Report (the "Kerrigan Report"), which is a reference commonly used in the automobile dealership industry, dated September, 2021, makes the following material observations: (1) the automobile dealership buy/sell market over the last 12 months "has been nothing short of extraordinary;" (2) "today's activity level is a byproduct of the industry's explosive profitability;" (3) "most dealerships are achieving profitability levels several times higher than historical averages;" (4) "limited vehicle supply is intersecting with increasing consumer demand … resulting in record prices for both new and used vehicles;"(5) "higher gross profits are expected to be a fixture of the industry into next year and potentially even longer;" (6) "with more buyers seeking acquisitions from a limited supply of sellers, the rising tide of industry performance is lifting most boats, resulting in record valuations for many franchises;" (7) "today, dealers not only have a historic amount of cash in their bank accounts, they also have increasing access to debt. Many find themselves in the strongest financial position they have ever been in their careers;" and, (8) "sellers are also increasingly aware that the current return on equity ("ROE"), which is estimated at over 57% as of the end of June 2021, will be very hard to replicate in today's low yield investment environment… Few investments provide the level of ROE afforded dealers in 2021."

21. Similarly, highlights from the August 27, 2021 Haig Report, another reference commonly used in the automobile dealership industry, reflect: (1) "Blue Sky [Goodwill] Values Continue to Hit Record Levels;" (2) "Blue Sky values rose an estimated 52% from the end of 2019

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and 26% from the end of 2020 and are now at record-high levels;" (3) "the average privately-owned dealership made $3.1 million over the past 12 months, 2.2x profits in 2019"; (4) "unprecedented conditions continue in auto retail fueled by inventory shortages and strong economic recovery;" (5) "buy-sell activity has exploded;" and (6) "dealers are enjoying these unprecedented conditions of high margins and low expenses which are leading to record high profits and record high dealership values."

22. The Kerrigan 2021 Year End Blue Sky Report, dated April, 2022, notes there were 383 dealership buy/sell transactions in 2021 (representing 830 franchises), a 32.5% increase over 2020 (289)and a 71.7% increase over the 2015-2019 pre-pandemic average of 223; (2) Hyundai experienced an increase in unit sales of 14.8% and an increase in market share of 63 basis points to 4.9%, the highest level of market share the franchise has seen since 2011; (3) Hyundai's parent company, Hyundai Motor Company, announced a 20% increase in forecasted North American sales in 2022; (4) Hyundai's low-end multiples of value increased from 3.5 to 3.75 and high-end multiples from 4.5 to 4.75. These data clearly indicate favorable conditions for buy sell in 2020/2021 and a trend for higher value multiples.

23. In summary, after 2019, the market for buying and selling new car dealerships has been brisk and steady, continuing through the current date. Availability of capital to complete acquisitions remains strong.

24. Also, since 2020, customer demand for new and used vehicles has been strong and, in conjunction with system-wide constraints on the supply of new cars, it is difficult to find any dealer who has not benefitted from higher margins on new and used car sales continually from 2020 through the current date. The Stivers Hyundai/Genesis franchise is not an exception to these favorable operating conditions.

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25. As I stated above, the Stivers Hyundai/Genesis dealership in Columbia has realized substantial profits in the amount of $5,893,886since the termination of the APA. Furthermore, this Hyundai/Genesis dealership currently is worth approximately $[redacted] (i.e., dealership operations, excluding real estate), generating a $[redacted] financial benefit to Stivers Brothers Automotive by retaining the Columbia Hyundai/Genesis franchise.

26. Given the reported Columbia Hyundai/Genesis operating profits (stated above) and the increase in franchise value, there is no reliable evidence of damages to the Columbia Hyundai/Genesis dealership resulting from the APA termination.

27. Contrary to the allegation of damages, Stivers Brothers Automotive has realized a total economic benefit from the termination of the Columbia Chevrolet and Hyundai/Genesis APAs at issue in this case of $10,659,284 including the increased sales price for the Columbia Chevrolet franchise ($500,000), the Columbia Chevrolet net profits earned by Stivers Brothers Automotive from April, 2020 through September, 2020 ($265,398), the Columbia Hyundai/Genesis net profits realized ($5,893,886), and the increase in value ($[redacted]) after April 2020.

28. Furthermore, the recent real estate investment by Stivers Brothers Automotive for the Columbia Hyundai/Genesis dealership contradicts the allegation of damages. The Columbia, South Carolina business media reported that, in about May 2021, Stivers Brothers Realty (a related party) closed the purchase of 7.3 acres at Clemson and Farrow Roads near Interstate 77 in Columbia, South Carolina for $2.05 million to build new Hyundai/Genesis dealership facilities. Increasing investments are universally interpreted by economists as an indicator of a positive outlook for growth in profits. Real estate investments are usually the largest form of business investment and indicate confident expectations of increasing returns for the business. This real

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estate investment is evidence that Stivers Brothers Automotive has determined that the Columbia Hyundai/Genesis dealership can remain profitable even after incurring higher rental costs associated with the new dealership location.

29. In conclusion, Stivers Brothers Automotive has suffered no damages to its Columbia Hyundai/Genesis franchise as a result of the APA termination. However, if the court were to make a finding of damages, Stivers Brothers Automotive has fully mitigated its alleged damages by its post-termination profits, by increase in the value of the Columbia Hyundai/Genesis franchise, and by acting to exploit the growth potential of the Columbia Hyundai/Genesis franchise.

FURTHER AFFIANT SAYETH NAUGHT.

JAMES F. JOYNER, III, CPA, CVA/ABV, CPC, AIFA, CRM, CPVA

SWORN TO before me this 06
day of May, 2022.

Wanda K. Schultz
Notary Public for South Carolina
My Commission Expires: 04 February 2025



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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

STIVERS BROTHERS AUTOMOTIVE, INC.,

Plaintiff,

v.

W. WARNER PEACOCK and PEACOCK AUTOMOTIVE, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A NO. 2020-CP-40-01934

AFFIDAVIT OF JOHN M. BRENNAN IN SUPPORT OF PEACOCK AUTOMOTIVE'S MOTION FOR A PARTIAL FINAL SUMMARY JUDGMENT

STATE OF FLORIDA
COUNTY OF ORANGE

BEFORE ME, the undersigned authority, this day personally appeared JOHN M. BRENNAN, who, being first duly sworn, deposes and says:

1. I am John M. Brennan. I am a Shareholder, Director, and Chairman of the Litigation Section of Gray Robinson, P.A. in Orlando, Florida. Gray Robinson, P.A. is a statewide law firm in Florida with a Washington D.C. office. I am the owner of the John M. Brennan Self-Directed IRA through which I have invested in Peacock Automotive, LLC ("Peacock Automotive"). The John M. Brennan Self-Directed IRA is a member of Peacock Automotive. I am also a Manager of Peacock Automotive. GrayRobinson, P.A. and I serve as legal counsel to Peacock Automotive.

2. I have personal knowledge of the matters set forth herein except where I have indicated my belief based on known or admitted facts.

3. Stivers declined to accept Peacock Automotive's three proposals in July, October and December, 2020 to close the purchase and sale of Stivers Hyundai/Genesis Columbia for the

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full goodwill contract price ($3.5 million) and terms, including a $500,000 deposit and payment in cash at closing. Peacock Automotive was ready, willing and able to close these three proposals and assume the Stivers Hyundai/Genesis Columbia lease that would have fully avoided Stivers' alleged damages. My understanding is that the terms of the July 2020 APA were all agreed to except for the timing of the approval of General Motors and Hyundai Motors America.

4. Stivers' allegations that it has been damaged by the termination of the Hyundai/Genesis APA is belied by the substantial profits it has realized since April of 2020 and by the increased value of the Hyundai/Genesis franchises.

5. I have reviewed Stivers' discovery responses in this case and am aware that Stivers sold its Columbia Chevrolet franchise to Jim Hudson in October, 2020 for $4 million, a $500,000 profit over the $3.5 million APA price with Peacock Automotive for the Columbia Chevrolet franchise. Stivers Chevrolet Columbia's operating net profits from April, 2020 – September, 2020, as reported in its monthly financial statements to General Motors, were $265,398. Thus, Stivers benefitted by approximately $765,398 as a result of the termination by Peacock Automotive of the APA for the Columbia Chevrolet franchise. Stivers admitted in its third Supplemental Answers to Peacock's first set of Interrogatories that it has fully mitigated its damages in connection with the termination of the APA for the Columbia Chevrolet franchise.

6. From April, 2020 through March, 2022, Stivers has realized $5,893,886 in net profits from the operation of the Hyundai and Genesis franchises in Columbia, South Carolina, as reported in Stivers' monthly financial statements to Hyundai and Genesis.

7. Furthermore, in today's market for automobile dealerships, the Stivers Columbia Hyundai/Genesis franchise is worth approximately $[redacted] based on the trends in franchise

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sales and the sale of Peacock's comparable Hyundai/Genesis dealership in Columbia, South Carolina in September, 2021.

8. Stivers has therefore, realized a total economic benefit as a result of the termination of the Chevrolet and Hyundai/Genesis APAs of $[redacted]

9. The value of automobile dealership franchises not only remained strong throughout the pandemic; they experienced substantial growth. The Haig Reports and Kerrigan Blue Sky Reports are widely used and considered as authoritative in the automobile dealership business. In fact, Stivers' broker in its dealings with Peacock Automotive (Tony Wolfe) used the Haig Report multiples in his sales materials presented to Peacock Automotive.

10. The Kerrigan Blue Sky Summary, dated April 1, 2020, reported "I continue to expect the buy/sell market to remain active and valuations strong."

11. Similarly, the Haig Report, stated in its April, 2020 issue: (a) The large majority of our engagements are moving forward and valuations remain unchanged. We are hearing the same thing from lenders and other advisors in our space; and (b) To date, the feedback we are receiving from many other firms involved in auto buy-sells along with our own practice indicates that transactions are moving ahead with minimal impact on pricing, but some potential delays to closing. Further, the Haig first quarter 2020 report stated: "Despite the pandemic, our firm is on track to sell more dealerships in 2020 than at any time in our history. The buyers of these stores are investing hundreds of millions of dollars since they believe there is a bright future in auto retail."

12. The buy/sell market remained robust, providing Stivers with ample opportunities to sell its Columbia Hyundai and Genesis franchises.

13. The Haig Report for the third quarter 2020, issued in about November, 2020, states:

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A. There are currently many buyers looking to acquire dealerships. They are willing to pay healthy prices for stores and lenders are also bullish and eager to lend to acquirers … It's possible we could be entering into a more rapid phase of consolidation in our industry. Current dealership valuations are high.

B. We expect buy-sell activity to continue to accelerate for the balance of the year and into 2021. Profits are likely to remain high, debt will remain cheap, and there are many groups looking to grow.

C. The result of these various trends is that dealership values have increased and we are seeing more buy-sell activity. We expect these robust conditions to continue well into 2021.

14. The market for automobile dealerships remained strong through 2021 and into the present. The third quarter 2021 Haig Report states:

A. Blue Sky Multiples At All-Time High Levels … we now estimate that the blue sky value of dealerships is 61% higher now than at the end of 2019, and 33% higher than at the end of 2020, largely due to higher profitability levels.

B. The average profit at a privately-owned dealership exploded to an estimated $3.4M over the past twelve months ended September 2021, an increase of 142.2% (2.4x!) compared to 2019.

C. As we said earlier, we are running out of superlatives to describe just how good conditions are for dealers right now … profits have never been greater … The average blue sky being paid for dealerships that are sold through a competitive marketing process has reached an estimated $10.9M, up 61% from 2019.

15. Stivers' choice to retain its Hyundai and Genesis franchises clearly reflects a business decision that the goodwill value of the franchises is far in excess of the contract price under the Peacock Automotive APA. As the Kerrigan Quarterly Blue Sky Report, dated September, 2021, noted: "sellers are also increasingly aware that the current return on equity ("ROE"), which is estimated at over 57% as of the end of June 2021, will be very hard to replicate in today's low yield investment environment… Few investments provide the level of ROE afforded dealers in 2021."

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16. Hyundai's growth as a franchise was also exceptional during this period.

A. In its First Quarter 2021 report, Kerrigan stated: "Specifically, we increased Hyundai's and Kia's high-end multiple from 3.5 to 4.0. Both franchises outperformed the market in unit sales in 2020 and 2021 and appear to have more effectively managed the chip crisis, with fewer inventory delays than many of their competitors. Furthermore, Hyundai and Kia are producing exceptionally designed vehicles and have launched popular new SUVs and CUVs, effectively meeting the rising consumer demand for trucks over cars."

B. Haig's first and second quarter 2021 reports spoke very favorably about the Hyundai brand: (1) "Hyundai is enjoying a strong start to 2021 with its highest Q1 sales ever, an increase of 38% compared to Q1 2020. Hyundai's recent success has gone hand in hand with the introduction of its new crossovers, including the full-sized Palisade which dealers struggle to keep in stock. Dealers are excited by renewed consumer confidence, stable inventory, and compelling lineup … Hyundai dealership profits have jumped before the pandemic and are now even higher;" and (2) Hyundai is enjoying an increase in sales of 52.2% in the first six months of 2021 compared to the same period in 2020, more than almost any other brand.

C. In its Third Quarter 2021 report issued in December, 2021, Kerrigan noted Hyundai was ranked # 2 and was expected to increase 48% in value.

D. The Kerrigan 2021 Year End Blue Sky Report, dated April, 2022, noted Hyundai's parent company, Hyundai Motor Company, announced a 20% increase in forecasted North American sales in 2022.

FURTHER AFFIANT SAYETH NAUGHT.

JOHN M. BRENNAN

The foregoing instrument was verified, sworn to and acknowledged before me this 6th day of May, 2022, by John M. Brennan, who is personally known to me and who did take an oath.

Jessica Rolon
NOTARY PUBLIC
STATE OF FLORIDA
Comm# GG947626
Expires 5/8/2024

Jessica Rolon
(NAME: Printed, Typed or Stamped)
Notary Public, State of Florida
My Commission Expires: 5/8/24

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THE BLUE SKY REPORT®

A KERRIGAN QUARTERLY

2021 Annual Report

April 2022

KERRIGAN ADVISORS

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Contact Ryan Kerrigan: (949) 728-8849 | ryan@kerriganadvisors.com
www.KerriganAdvisors.com

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earnings. In general, higher volume dealerships are easier to manage and have less earnings volatility/risk, thus buyers prefer groups with high sales volume per dealership.

Group Factor Seven—Brand & Reputation: Dealership groups with exceptional brands in their market and strong reputations often trade at a premium, whereas those with poor reputations or no brand equity trade at a discount. Also, if a seller is unwilling to include the name of their group in a sale, perhaps because it is their family name, this can reduce the valuation of the group. The dealership group brand is often of significant value to a buyer, particularly if the buyer is entering a new market and the group has a strong reputation and long history in the area.

Group Factor Eight—Real Estate: Dealership groups with minimal real estate improvement requirements or relocations often trade at a premium. Similarly, dealership groups which own most of their property and are willing to sell that property as part of a transaction also tend to trade at a premium. By contrast, groups with significant facility upgrade requirements or leased property usually trade at a discount. This trend is similar to the valuation trend for a single-point dealership.

In general, buyers of groups are more focused on valuing the entire enterprise, rather than each franchise. For those groups looking to expand, it is important to understand these drivers to ensure their acquisition strategy is value-enhancing, rather than detracting. As with all investing, executing on a strategic plan to increase the value of a business starts with understanding the valuation drivers and where best to allocate capital.

Fourth Quarter 2021 Blue Sky Multiple Adjustments

Given the tremendous transformation in auto retail in 2021 and expectations for future changes with electrification and digital retailing, Kerrigan Advisors made several adjustments to our blue sky multiples and multiple outlooks this quarter as detailed in our annual franchise review. It should be noted that uncertainty generally creates greater volatility in a business' valuation. The more uncertain buyers are regarding a franchise's future earnings, the lower the blue sky multiple they are willing to pay. With this in mind, Kerrigan Advisors downgraded our multiple outlooks for Chevrolet, Ford and Buick GMC franchises to negative from steady, as these domestics are flirting with new business models for their vast dealer networks. While these models may prove beneficial in the long term, the unknown associated with these changes is adding a level of risk to their proforma earnings, which may reduce their multiples in the future. In addition to these domestics' multiple outlook adjustment, we made the following changes to the fourth quarter 2021 blue sky multiples, the details of which are discussed in each franchise review.

- Reduced Chevrolet's low-end multiple from 3.75 to 3.5, in line with its domestic competitors
- Increased Hyundai's and Kia's low-end multiples from 3.5 to 3.75 and high-end multiples from 4.5 to 4.75
- Increased Nissan's low-end multiple from 2.5 to 3 and high-end multiple from 3.5 to 4
- Increased Porsche's low-end multiple from 7.5 to 8
- Increased Lexus' low-end multiple from 7 to 7.5
- Decreased Audi's low-end multiple from 7.0 to 6.75 and high-end multiple from 8.0 to 7.5

This summarizes Kerrigan Advisors' changes to our blue sky multiples for the fourth quarter of 2021. In the next section of this report, we provide our annual franchise review, including a discussion of buyer demand, franchise profitability, product pipeline, electrification of the vehicle fleet, and our multiple outlook for each franchise in 2022.

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HYUNDAI Buyer demand for Hyundai dealerships continues to rise as the franchise gains market share in the US. In Kerrigan Advisors' 2021 Dealer Survey, Hyundai had the 2nd highest expected valuation gain, with 48% of dealers expecting the franchise to increase in value, behind Toyota and tied with Kia, up from 24% in Kerrigan Advisors' 2020 Dealer Survey. The franchise also saw an impressive 17-percentage point reduction in those who expected the franchise value to decline. In 2021, Hyundai outperformed the overall industry once again, with an impressive increase in unit sales of 14.8%, despite the overall industry being up only 3.3%. Hyundai increased market share by 63 basis points to 4.9%, the highest level of market share the franchise has seen since 2011. In the fourth quarter of 2021, Hyundai continued to outperform, down 14.8% in unit sales when the overall industry was down 21.4%. Hyundai dealers remain optimistic with its 2022 sales prospects as Hyundai's parent company, Hyundai Motor Company, announced a 20% increase in forecasted North American sales in 2022. Hyundai, like its sister brand Kia, ranks highly in reliability, 3rd overall, behind Kia and Buick, in J.D. Power's 2022 Vehicle Dependability Study. Hyundai also ranks highly in residual value, with three top models (the most of any OEM), namely Kona EV, Kona, and Accent. Globally, Hyundai Motor Company plans to sell 1.7 million EVs in 2026, an increase of 700,000 units above its previous goal of 1 million EVs in 2025. Hyundai announced a $7.4 billion investment in an EV factory in the US and the manufacturer also plans to introduce a new global EV platform that will support 13 battery-electric models. Hyundai's first vehicle on the electric-only E-GMP platform, Ioniq 5, arrived in showrooms in early 2022; however, initial reports indicate that, unlike Kia's EV6, the Ioniq 5 is only available in 19 states, and not all Hyundai dealers in those states qualify to sell the EV, causing some dealer dissatisfaction. In efforts to combat the global shortage of microchips, Hyundai Motor North America President and CEO, José Muñoz, announced the manufacturer is exploring developing its own microchips. Hyundai Motor Company posted a record full-year operating profit of $5.59 billion for fiscal year-end December 31, 2021, a 179% increase over fiscal year-end December 31, 2020. Kerrigan Advisors is increasing Hyundai's blue sky multiple range this quarter by .25 due to rising buyer demand and its outlook is steady with this multiple change.

Kerrigan Advisors Blue Sky Multiple: 3.75 – 4.75 Multiple Outlook: Steady

KIA Buyer demand for Kia dealerships rose considerably in 2021. In Kerrigan Advisors' 2021 Dealer Survey, Kia had the second highest expected valuation gain, with 48% of dealers expecting the franchise to increase in value, behind Toyota and tied with Hyundai, up from 22% in Kerrigan Advisors' 2020 Dealer Survey. Kia's 26-percentage point increase from 2020 was the highest increase of any franchise. The franchise also saw an impressive 16-percentage point reduction in those who expected the franchise value to decline. In 2021, Kia outperformed the overall industry once again with an impressive increase in unit sales of 19.7%, despite the overall industry being up only 3.3%. Kia increased market share by an impressive 64 basis points to 4.7%, the highest level of market share for the franchise on record. In the fourth quarter of 2021, Kia continued to outperform, down 7.5% in unit sales when the overall industry was down 21.4%. In 2021 Kia maintained its impressive shift in product mix to crossovers, with crossovers representing 53% of its sales. Kia dealers remain optimistic with its 2022 sales prospects as Kia's parent company, Hyundai Motor Company, announced a 20% increase in forecasted North American sales in 2022. Kia retained its #1 spot in J.D. Power's Vehicle Dependability Study for 2022 and Kia K5 and Telluride also reigned the top spots in J.D. Power's 2022 US ALG Residual Value Award for Midsize and Midsize 3-Row Seating, respectively. Kia's UIO counts per franchise continue to improve, but remain one of the lowest UIO counts per franchise, resulting in weaker service and parts sales, and greater exposure to the cyclicality of the new car market when compared to higher-value non-luxury brands. This remains the primary reason Kia franchises are valued below the leading import franchises despite high quality and attractively designed vehicles. With continued market share and sales gains, Kia dealers' fixed operations business should continue to improve. In 2021, Kia experienced strong growth in hybrid and battery-electric sales, up 97% from 2020. Kia's first vehicle on the electric-only E-GMP platform, EV6, arrived in showrooms in early 2022 and the recently unveiled EV9 concept (a large battery-electric crossover larger than Telluride) is expected to be the next vehicle to arrive on the E-GMP platform. Initial reports indicate that Kia dealers in the US are well-positioned to retail EVs, with 94% of Kia dealers having installed the necessary charging infrastructure. Kerrigan Advisors is increasing Kia's blue sky multiple range this quarter by .25 due to rising buyer demand for the franchise and its outlook is steady with this multiple change.

Kerrigan Advisors Blue Sky Multiple: 3.75 – 4.75 Multiple Outlook: Steady

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement") is dated June 5, 2020, and is between **Stivers Brothers Automotive, Inc.**, a South Carolina corporation ("Seller"), **Jim Hudson Chevrolet, Inc.**, a South Carolina corporation ("Buyer"), and **Keith E. Hudson**, an individual ("Buyer Principal").

Recitals:

WHEREAS, Seller is engaged in the operation of a Chevrolet automobile dealership business located at 111 Newland Road, Columbia, South Carolina 29229 (the "Chevrolet Business"); and

WHEREAS, Seller is also engaged in the operation of a Hyundai and Genesis automobile dealership business located at 101 Newland Road, Columbia, South Carolina 29229 (the "Hyundai/Genesis Business"); and

WHEREAS, Seller desires to sell, and Buyer desires to buy, either directly or through another business entity to which Buyer may assign its rights hereunder pursuant to Section 14.1, certain of the assets pertaining to the Chevrolet Business (but not the Hyundai/Genesis Business), on the terms set forth in this Agreement; and

WHEREAS, concurrently with the execution of this Agreement, Buyer, Seller and the Escrow Agent (as defined in the Escrow Agreement hereinafter defined) have entered into an escrow agreement (the "Escrow Agreement"), and Buyer has deposited with the Escrow Agent the sum of One Hundred and Thousand Dollars ($100,000.00) (the "Escrow Deposit"), which amount will be credited to the total Purchase Price payable by Buyer to Seller hereunder at the Closing.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the receipt and legal sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

ARTICLE I
DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following capitalized terms, when used in this Agreement, have the following meanings:

(a) "Assets" means: the New Vehicles (as defined in Section 3.1); the Demonstrators (as defined in Section 3.2); the Loaners (as defined in Section 3.3); the Used Vehicles (as defined in Section 3.5); the Parts (as defined in Section 4.2); the Oil and Grease (as defined in Section 4.3); the Miscellaneous Supplies (as defined in Section 4.4); the Work in Progress (as defined in Section 5.1); the F&E (as defined in Section 5.2); the Other Assets (as defined in Section 5.3); and the goodwill of the Chevrolet Business.

(b) "Business Day" means a day other than a Saturday, a Sunday, or a day on which banks are closed in the State of South Carolina or the State of Alabama; all references in this Agreement to days that are not specifically references to Business Days will be deemed references to calendar days.

(c) "Closing" means the closing of the purchase and sale of the Assets pursuant to this Agreement, which the parties shall hold at the offices of the Chevrolet Business, or such other mutually agreed location in Columbia, South Carolina, beginning at 9:00 a.m. on the Closing Date; the Closing will be effective for all purposes as of the opening of business on the Closing Date.

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(d) "Closing Date" means the date of the Closing, which will be a date, not later than the Closing Date Deadline, which date will be designated by Buyer and reasonably acceptable to Seller and will not be later than five Business Days after satisfaction of the conditions set forth in Sections 8.5, 8.6, 9.5 and 9.6, or such other date as is mutually agreed upon by the parties hereto.

(e) "Closing Date Deadline" means the date that is the 120th day after the date of this Agreement (not counting the date of this Agreement); provided, however, that Buyer and Seller may agree in writing to extend the Closing Date Deadline to a further date or dates; provided, further, that if the Closing Date Deadline (as the same may have been extended pursuant to the preceding sentence) falls on a day that is not a Business Day, the Closing Date Deadline will be deemed automatically extended to the first Business Day following such day upon which the Closing Date Deadline otherwise falls.

(f) "Existing Lease" means that certain Lease Agreement dated as of December 23, 2003, between CARS-DB4, L.P., a Delaware limited partnership (as successor by assignment from CAR SON Newsome II L.L.C., a Delaware limited liability company), as landlord ("Landlord"), and Stivers Realty, L.C., a Missouri limited liability company (as successor by assignment from Sonic-Newsome Chevrolet World, Inc., a South Carolina corporation, and Sonic Capitol Imports, Inc., a South Carolina corporation), as tenant ("Tenant"), as amended by that certain Amendment to Lease Agreement and Reaffirmation of Guaranty dated as of June 25, 2004, as further amended by that certain Second Amendment to Lease Agreement and Reaffirmation of Guaranty dated as of March 20, 2009 but effective as of December 31, 2008, as further amended by that certain Third Amendment to Lease Agreement dated as of May 30, 2019, as further modified by that certain Fourth Amendment to Lease Agreement and Reaffirmation of Guaranty dated on or about June 4, 2020, pursuant to which Seller, by way of sublease from Tenant (which is Seller's affiliate), leases the Premises upon which the Chevrolet Business and the Hyundai/Genesis Business are operated.

(g) "Existing Lease Guaranty" means that certain Guaranty and Subordination Agreement dated as of May 30, 2019, given by E.M. Stivers, Inc., a Missouri corporation ("E.M. Stivers"), and Seller in favor of Landlord, pursuant to which E.M. Stivers and Seller have guaranteed the obligations of Tenant under the Existing Lease.

(h) "Inventory Date" means the close of business on the date of completion of the Inventory (as defined in Section 4.1), which date will not be more than three days prior to the Closing Date, or such later date prior to the Closing as is mutually agreed by Seller and Buyer.

(i) "Liabilities" means all obligations of Seller arising in the ordinary course of business on or after the Closing Date including, without limitation, the following: (a) the liabilities and obligations of Seller under (i) the Existing Lease, (ii) those contracts and leases of Seller that are set forth on Schedule 1.1(i) and for which Buyer has agreed in writing to assume, and (iii) those contracts and leases of Seller that are entered into in connection with the Chevrolet Business in the ordinary course of business at any time after the date hereof and on or prior to the Closing Date and for which Buyer has agreed in writing to assume, and (b) the liabilities and obligations under all unfilled retail orders and all coupons issued or discounts or other promotions offered by Seller to customers of the Chevrolet Business prior to the Closing and that remain outstanding as of the Closing.

(j) "Manufacturer" means General Motors Company.

(k) "Premises" means the real property and improvements located at 111 Newland Road in Columbia, South Carolina (upon which the Chevrolet Business is operated) and 101 Newland

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Road in Columbia, South Carolina (upon which the Hyundai/Genesis Business is operated), as more particularly described in the Existing Lease.

ARTICLE II
SALE AND PURCHASE OF THE ASSETS

2.1 Sale and Purchase. Subject to the terms set forth in this Agreement, at the Closing, Seller shall sell, transfer, and convey the Assets to Buyer, and Buyer shall purchase and acquire the Assets from Seller, for the consideration contained in this Agreement. Seller shall effectuate the sale, transfer, and conveyance of the Assets by execution and delivery at the Closing of a bill of sale in a form reasonably acceptable to Buyer (the "Bill of Sale") and such other instruments of assignment, transfer, and conveyance as Buyer may reasonably request. Except to the extent specifically included within the Assets, Seller shall not sell, and Buyer shall not purchase, any other tangible or intangible assets of Seller of any kind whatsoever, including, without limitation, all cash, accounts receivable, rights to refund of dealer's discounts, reserves and other factory allowances and incentives, and replacement parts, contracts and leases not assumed, and inventory not purchased, as well as all properties and assets used in connection with the Hyundai/Genesis Business.

2.2 Purchase Price. For and in consideration of the Assets, Buyer shall pay to Seller, at the time and in the manner provided hereinbelow, an aggregate purchase price (the "Purchase Price") equal to the following:

(a) Four Million Dollars ($4,000,000.00), as the purchase price for the goodwill and intangible Assets included in the Assets (the "Goodwill Purchase Price"), plus

(b) the New Vehicle Purchase Price (as defined in Section 3.1); plus

(c) the Demonstrator Purchase Price (as defined in Section 3.2); plus

(d) the Loaner Purchase Price (as defined in Section 3.3); plus

(d) the Used Vehicle Purchase Price (as defined in Section 3.5); plus

(e) the Parts Purchase Price (as defined in Section 4.2); plus

(f) the Oil and Grease Purchase Price (as defined in Section 4.3); plus

(g) the Miscellaneous Supplies Purchase Price (as defined in Section 4.4); plus

(h) the Work in Progress Purchase Price (as defined in Section 5.1); plus

(i) the F&E Purchase Price (as defined in Section 5.2).

The parties acknowledge that certain of the Purchase Price components set forth above will be calculated based on information contained in one or more Schedules or in the Inventory (as defined in Section 4.1) that will be delivered prior to the Closing Date. The parties also acknowledge that they may have to make adjustments to those Purchase Price components to reflect increases or decreases in the values of the underlying Assets that occur between the time of delivery of such Schedule/the Inventory and the Closing Date, and that the parties may also have to adjust related components of the Purchase Price to reflect any such adjustments to the value of those Assets. The parties shall make all of the foregoing adjustments (with appropriate payments by the parties) as promptly as possible after the Closing.

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2.3 Payment of Purchase Price. Subject to the terms hereinafter set forth, at the Closing:

(a) Buyer and Seller shall deliver joint written instructions to the Escrow Agent to disburse the Escrow Deposit to Seller; and

(b) Buyer shall deliver to Seller, by wire transfer to an account designated by Seller (such account designation to be made by Seller at least one Business Day prior to the Closing Date), an amount equal to the Purchase Price minus the Escrow Deposit (such aggregate amount, the "Closing Payment").

2.4 Allocation of Purchase Price. Each party shall use the Purchase Price allocation described in Section 2.2, above, in all reporting to, and tax returns filed with, the Internal Revenue Service and other state and local taxing authorities; provided, however, Buyer and Seller may mutually agree in writing to reallocate the Purchase Price among the Assets, including reallocating a portion of the Goodwill Purchase Price to one or more tangible Assets. At the Closing, Buyer and Seller shall advise each other in writing of their respective Federal Tax Identification Numbers.

2.5 Assignment and Assumption. At the Closing, Seller shall assign to Buyer, and Buyer shall assume and agree to perform and discharge, the Liabilities pursuant to an assignment and assumption agreement in form and substance reasonably acceptable to Buyer and Seller (the "Assumption Agreement").

2.6 Assignment and Assumption of Existing Lease.

(a) At the Closing, Buyer shall execute and deliver, and Seller shall cause Tenant to execute and deliver, an Assignment and Assumption of Lease in form and substance acceptable to Landlord and the parties hereto (the "Existing Lease Assignment"), pursuant to which the Existing Lease will be assigned to, and assumed by, Buyer at the Closing. Simultaneously with the execution and delivery of the same, Buyer shall cause Landlord to give its written consent to the same in form and substance reasonably acceptable to Buyer and Seller, which written consent must include a full release of Tenant from all of its obligations under the Existing Lease effective as of the date of said assignment and a full release of Seller and E.M. Stivers from all of their obligations under all guaranty and/or indemnity agreements relating to the Existing Lease, including the Existing Lease Guaranty, effective as of the date of said assignment. In addition thereto, at the Closing, Buyer Principal shall execute and deliver a guaranty agreement in form and substance acceptable to Landlord (the "Lease Guaranty"), pursuant to which Buyer Principal will guarantee the obligations of Buyer with respect to the Existing Lease Assignment and the Existing Lease.

(b) If Landlord will not consent to the Existing Lease Assignment, or if Landlord will consent to the Existing Lease Assignment, but will not release Tenant, Seller, and E.M. Stivers from all of their obligations under the Existing Lease and all guaranty and/or indemnity agreements executed in connection therewith (including the Existing Lease Guaranty), Buyer shall execute and deliver, and Seller shall cause Tenant to execute and deliver, at the Closing (in lieu of the obligations of the parties set forth in Section 2.6(a)), a Sublease Agreement, in form and substance reasonably acceptable to Buyer and Seller (the "Sublease Agreement"), pursuant to which Tenant shall sublease to Buyer that portion of the Premises in which Seller conducts the Chevrolet Business for the remainder of the term of the Existing Lease and otherwise upon terms substantially equivalent to the terms of the Existing Lease (excluding any renewal terms or purchase options thereunder). Simultaneously with the execution and delivery of the same, Buyer shall cause Landlord to give its written consent to the same in form and substance reasonably acceptable to Buyer and Seller. In addition thereto, at the Closing, Buyer Principal shall execute and deliver a guaranty agreement in form and substance reasonably acceptable to Seller (the

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"Sublease Guaranty"), pursuant to which Buyer Principal will guarantee the obligations of Buyer with respect to the Sublease Agreement.

2.7 Sublease of Premises for Hyundai/Genesis Business. If Landlord consents to the Existing Lease Assignment, at the Closing, Buyer and Seller shall execute and deliver a Sublease Agreement in the form of, and having the terms that are set forth in, the Sublease Agreement attached as Exhibit A (the "Hyundai/Genesis Sublease Agreement"), pursuant to which Buyer shall sublease to Seller that portion of the Premises in which Seller conducts its Hyundai/Genesis Business. Simultaneously with the execution and delivery of the same, Seller shall cause Landlord to give its written consent to the same in a form and substance reasonably acceptable to Buyer and Seller. In connection therewith, Seller shall cause its obligations under the Hyundai/Genesis Sublease Agreement to be secured by a commercial letter of credit in the amount of $1,000,0000 issued by a financial institution reasonably acceptable to Buyer, containing such restrictions on Buyer's ability to draw against it as Seller may reasonably determine, and otherwise on such terms as are reasonably acceptable to Buyer (and if Seller cannot obtain such a commercial letter of credit for any reason, then by such other security as Buyer may reasonably approve) (the "Sublease Security").

2.8 EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER UNDERSTANDS AND AGREES THAT BUYER IS ACQUIRING THE ASSETS AS IS WHERE IS. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH HEREIN, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE REGARDING THE ASSETS, ANY PROPERTIES (WHETHER OWNED OR LEASED), THE LIABILITIES, THE CHEVROLET BUSINESS, OR OTHERWISE, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE III
NEW VEHICLES, DEMONSTRATORS AND USED VEHICLES

3.1 New Vehicles. At the Closing, Buyer shall purchase all of Seller's untitled 2020 and later model year new motor vehicles in Seller's stock in the Chevrolet Business and unsold by Seller as of the Closing Date that are listed by Seller on Schedule 3.1, which Schedule Seller shall deliver to Buyer prior to the Closing (collectively, the "New Vehicles" and, individually, a "New Vehicle"); provided, however, that any New Vehicle with more than 500 miles on its odometer as of the Closing Date will be treated by the parties as a Demonstrator rather than as a New Vehicle and sold by Seller to Buyer pursuant to Section 3.2; and provided, further, that any New Vehicle with 5,000 miles or more on its odometer as of the Closing Date will be treated by the parties as a Used Vehicle rather than a New Vehicle and sold by Seller to Buyer pursuant to Section 3.5. The purchase price to be paid by Buyer for each New Vehicle is the price at which the New Vehicle was invoiced to Seller by Manufacturer, as adjusted pursuant to Section 3.4 (the sum of all such amounts to be paid for New Vehicles as determined by this Section and Section 3.4 is herein referred to as the "New Vehicle Purchase Price"). Seller shall set forth on Schedule 3.1 each New Vehicle's model, invoice cost, odometer reading, and all other information necessary to calculate the New Vehicle Purchase Price with respect to such New Vehicle. At the Closing, Seller shall assign to Buyer, without any additional consideration therefor, by appropriate documents reasonably satisfactory to Buyer, all unfilled retail orders and deposits made thereon, and Buyer hereby agrees to fill such orders.

3.2 Demonstrators. At the Closing, Buyer shall purchase all of Seller's untitled 2020 and later model year new motor vehicles in Seller's stock in the Chevrolet Business and unsold by Seller as of the Closing Date that (a) either (i) are used in the ordinary course of business for the purpose of

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demonstration or (ii) have odometer readings as of the Closing Date with more than 500 miles and (b), in either case, are listed by Seller on Schedule 3.2, which Schedule Seller shall deliver to Buyer prior to the Closing (collectively, the "Demonstrators" and, individually, a "Demonstrator"); provided, however, that any Demonstrator with 5,000 miles or more on its odometer as of the Closing Date will be treated by the parties as a Used Vehicle rather than as a Demonstrator and sold by Seller to Buyer pursuant to Section 3.5. The purchase price to be paid by Buyer for each Demonstrator is the price at which the Demonstrator was invoiced to Seller by Manufacturer, as adjusted pursuant to Section 3.4, and as reduced by an amount equal to $.25 cents for each mile on the vehicle's odometer in excess of 500 miles (the sum of all such amounts to be paid for Demonstrators as determined by this Section and Section 3.4 is herein referred to as the "Demonstrator Purchase Price"). Seller shall set forth on Schedule 3.2 each Demonstrator's model, invoice cost, odometer reading, and all other information necessary to calculate the Demonstrator Purchase Price with respect to such Demonstrator.

3.3 Loaners. At the Closing, Buyer shall purchase up to 13 active and up to 15 down untitled 2020 and later model year new motor vehicles in Seller's stock in the Chevrolet Business and unsold by Seller as of the Closing Date that (a) are placed in the Manufacturer's loaner or service loaner program as of the Closing Date and (b) are listed by Seller on Schedule 3.3, which Schedule Seller shall deliver to Buyer prior to the Closing (collectively, the "Loaners" and, individually, a "Loaner"); provided, however, that any Loaner with 5,000 miles or more on its odometer as of the Closing Date will be treated by the parties as "used" rather than as a Loaner and sold by Seller to Buyer pursuant to Section 3.5. The purchase price to be paid by Buyer for each Loaner is the price at which the Loaner was invoiced to Seller by Manufacturer, as adjusted pursuant to Section 3.4, and as reduced by an amount equal to $.25 cents for each mile on the vehicle's odometer (the sum of all such amounts to be paid for Loaners as determined by this Section and Section 3.4 is herein referred to as the "Loaner Purchase Price"). Seller shall set forth on Schedule 3.3 each Loaner's model, invoice cost, odometer reading, and all other information necessary to calculate the Loaner Purchase Price with respect to such Loaner.

3.4 Adjustment of Purchase Price for Certain Vehicles. The parties shall adjust the purchase price to be paid for each New Vehicle, Demonstrator, and Loaner purchased under this Article III as follows: (a) the parties shall increase the purchase price by the dealer cost of any equipment and accessories that have been installed in such vehicle; and (b) the parties shall decrease the purchase price by (i) the dealer cost of any equipment and accessories that have been removed from such vehicle, (ii) any Chevrolet "Essential Brand Elements" program credits ("EBE credits") received by Seller with respect to such vehicle, and (iii) any holdback, rebates, allowances, or incentives (other than EBE credits) of any nature paid or payable by Manufacturer to Seller with respect to such vehicle. Buyer acknowledges that all such EBE credits, holdback, rebates, allowances, and other incentives will not be included in the Assets and will remain the property of Seller. Seller shall disclose to Buyer if any New Vehicles have been repaired or repainted, or have had parts replaced, including but not limited to all damages reportable pursuant to S.C. Code Ann. §§ 56-32-10, et seq., and for any New Vehicle that has damage that is required to be disclosed by Seller to Buyer under S.C. Code Ann. § 56-32-20, the parties shall decrease the purchase price to be paid therefor by Buyer by an additional 5.00% beyond the adjustments provided for above in this Section 3.4; all other New Vehicles that have damage that Seller is not required to disclose to Seller under S.C. Code Ann. § 56-32-20 will be sold by Seller to Buyer without the adjustment described in this sentence.

3.5 Used Vehicles. Buyer may (but is not obligated to) purchase any other motor vehicle from Seller that is not a New Vehicle, Demonstrator, or Loaner. In furtherance therewith, Buyer and Seller shall, on or before the Inventory Date, perform an inventory of Seller's motor vehicles that are not New Vehicles, Demonstrators, or Loaners (including, without limitation, remarketed vehicles) and, in connection with such inventory, Buyer and Seller shall attempt to assign a mutually agreed price to each such vehicle owned by Seller as of the Inventory Date. If Buyer and Seller cannot agree to a price for any

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such vehicle owned by Seller, then Buyer will not purchase, and Seller will not sell, such vehicle in connection herewith. However, for all such vehicles owned by Seller for which Buyer and Seller are able to agree to a price, Buyer shall purchase from Seller, and Seller shall sell to Buyer, such vehicles (collectively, the "Used Vehicles" and, individually, a "Used Vehicle") at the Closing for the prices so agreed. The sum of all prices assigned to each such Used Vehicle purchased by Buyer pursuant to the terms of this Section are referred to herein as the "Used Vehicle Purchase Price".

ARTICLE IV
PARTS; OIL AND GREASE; MISCELLANEOUS SUPPLIES

4.1 Inventory. Following the execution hereof, Buyer and Seller shall engage a mutually acceptable third party engaged in the business of appraising, valuing and preparing inventories for automobile dealerships (the "Inventory Agent") to prepare an inventory list (the "Inventory") of the Parts (as defined in Section 4.2), the Oil and Grease (as defined in Section 4.3), and the Miscellaneous Supplies (as defined in Section 4.4) used by Seller in the Chevrolet Business. The Inventory will identify each Part separately and list its individual purchase price (as such purchase price is determined pursuant to Section 4.2) and will also identify whether each Part is new or used and the length of time such Part has been in inventory. The Inventory will also identify the Oil and Grease and Miscellaneous Supplies and list their respective purchase prices (as such purchase prices are determined pursuant to Section 4.3 and Section 4.4., respectively). Seller shall post the Inventory (insofar as it relates to Parts) to the Manufacturer's approved system of inventory control, to show each item extended by its unit price. Buyer and Seller shall each pay one-half of the cost of the Inventory. Buyer and Seller shall cause the Inventory to be completed by the Inventory Date.

4.2 Parts. At the Closing, Buyer shall purchase all parts and accessories owned by Seller at the Closing Date and used in the Chevrolet Business that (a) are new and unused, currently in the Manufacturer's parts catalog, packaged in their original packaging, unopened and undamaged for Chevrolet motor vehicles that (b) have been in Seller's inventory for less than 12 months as measured from the Inventory Date or the last date of sale as reflected in Seller's records (or are RIM eligible parts or accessories that have been in Seller's inventory for less than 16 months as measured from the Inventory Date), and (c) are listed in the Inventory (collectively, the "Parts" and, individually, a "Part"). The purchase price to be paid by Buyer for each Part is the price listed for such Part in the Master Price List (as defined herein), as reflected on the Inventory (the sum of all such amounts to be paid for the Parts as determined by this Section is herein referred to as the "Parts Purchase Price"). For purposes of this Agreement, "Master Price List" means the latest current Master Parts Price List Suggested List Prices and Dealer Prices of the Manufacturer, or other applicable similar price lists, of the Manufacturer, with supplements or the equivalent in effect as of the Inventory Date.

4.3 Oil and Grease. At the Closing, Buyer shall purchase all oil, gas, and grease owned by Seller that (a) are on the Premises at the Closing Date and used in the Chevrolet Business and (b) are identified in the Inventory (collectively, the "Oil and Grease"). The purchase price to be paid by Buyer for the Oil and Grease is the most recent prices at which Seller purchased the same, as verified by vendor invoices and as reflected on the Inventory (the sum of all such amounts to be paid for the Oil and Grease as determined by this Section is herein referred to as the "Oil and Grease Purchase Price").

4.4 Miscellaneous Supplies. At the Closing, Buyer shall purchase all other miscellaneous inventories, articles, non-OEM parts and accessories, and supplies owned by Seller and that (a) are on the Premises at the Closing Date and used in the Chevrolet Business and (b) are identified in the Inventory (collectively, the "Miscellaneous Supplies"). The purchase price to be paid by Buyer for the Miscellaneous Supplies is Seller's verifiable cost therefor, as reflected on the Inventory, not to exceed the

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aggregate sum of $15,000 (the sum of all such amounts to be paid for the Miscellaneous Supplies as determined by this Section is herein referred to as the "Miscellaneous Supplies Purchase Price").

ARTICLE V
WORK IN PROGRESS; FIXTURES AND EQUIPMENT; OTHER ASSETS

5.1 Work in Progress. At the Closing, Buyer shall buy, at Seller's customer wholesale cost for parts and Seller's customer pay rate for labor, such shop labor and sublet repairs as Seller has caused to be performed on any repair orders that are in process at the opening of business on the Closing Date with respect to the Chevrolet Business (the "Work in Progress") (the sum of all costs of Seller for the Work in Progress pursuant to the terms of this Section 5.1 is referred to herein as the "Work in Progress Purchase Price"). Buyer shall complete such repair work and will be entitled to the entire proceeds to be collected for such services. Seller will be entitled to the entire proceeds to be collected for any shop labor and sublet repair services that are not purchased and performed by Buyer.

5.2 Fixtures and Equipment. At the Closing, Buyer shall purchase all fixtures, leasehold improvements, machinery, equipment (including special tools, shop equipment, and computer equipment), signs and office equipment, company vehicles, and other tangible assets owned by Seller and that are used in connection with the Chevrolet Business and are listed on Schedule 5.2, which Schedule Seller shall deliver to Buyer prior to the Closing (collectively, the "F&E"). The purchase price to be paid by Buyer for each item of F&E is equal to Seller's net book value for such item as of the last day of the month immediately preceding the Closing Date, as such value is reflected on Schedule 5.2; provided, however, that the aggregate purchase price to be paid by Buyer for all F&E will be reduced by $50,000 (the sum of all values assigned to the F&E pursuant to the terms of this Section, as reduced by $50,000 is herein referred to as the "F&E Purchase Price").

5.3 Other Assets. At the Closing, and without payment of any additional consideration, Buyer shall purchase all of the following assets owned by Seller that are used in connection with the Chevrolet Business: (a) unused shop repair orders, parts sales tickets, accounting forms, binders, office and shop supplies and shop reference manuals and parts reference catalogs; (b) product sales training material and reference books on hand as of the Closing Date; (c) customer and registration lists pertaining to the sale of motor vehicles, service files (subject to Section 5.6), repair orders, owner follow-up lists and similar records; (d) telephone numbers and listings used by Seller; and (e) names and addresses of Seller's service customers and prospective purchasers (such items collectively referred to herein as the "Other Assets").

5.4 Warranty Obligations of Seller. Seller acknowledges that Buyer is not assuming any obligations under any warranties issued by Seller on the vehicles sold by Seller with respect to the Chevrolet Business prior to the Closing Date, except as provided in this Section 5.4. Upon receipt by Buyer of a claim under any such warranty, Buyer shall promptly notify Seller of such claim and Buyer shall not perform any work under such warranty with respect to such claim unless authorized in writing by Seller. If so authorized by Seller, Buyer shall perform such warranty work in a workmanlike manner and in accordance with the terms of such warranty and Seller shall reimburse Buyer for all of Buyer's actual costs for parts and labor in connection therewith. In the absence of such authorization by Seller, Buyer shall not be entitled to reimbursement for such warranty work and shall indemnify Seller for any Seller's Losses (as defined in Section 11.2) arising out of or based upon such warranty work performed by Buyer. At the Closing, Seller shall supply Buyer with a list of the specific types of such warranties and an address for and a designation of the person who will be responsible for authorizing Buyer to perform any services under any warranties issued by Seller on vehicles sold by Seller with respect to the Chevrolet Business prior to the Closing Date.

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5.5 Accounts Receivable. Seller shall retain all accounts receivable held by Seller with respect to the Chevrolet Business as of the Closing, and Buyer shall retain all accounts receivable arising out of sales and/or services of the Chevrolet Business after the Closing. Buyer has no responsibilities or obligations with respect to the documentation or collection of Seller's accounts receivable, except that Buyer, on Seller's behalf for a period of twelve months following the Closing, will accept payment of Seller's accounts receivable arising out of the operation of the Chevrolet Business prior to the Closing, at no charge to Seller, and Buyer shall forward to Seller, from time to time, all of the money so accepted on said accounts receivable.

5.6 Certain Records and Assets of Seller. Notwithstanding any provision of this Agreement to the contrary, Seller shall retain all of Seller's new and used car sales records, wholesale parts sales records, new and used parts sales records and service sales records (the "Sales Records"); provided, however, that, at the request of Buyer, Seller shall make available to Buyer for photocopying, at Buyer's cost, all Sales Records for the three years preceding the Closing Date. In addition, Seller is not selling to Buyer, and Buyer is not purchasing from Seller, under this Agreement any properties or assets used by Seller in connection with the Hyundai/Genesis Business or the corporate or financial records of Seller.

ARTICLE VI
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows:

6.1 Organization; Power and Authority; Authorization. Buyer is a corporation, duly incorporated, validly existing and in good standing under the laws of the State of South Carolina and has full power and authority to perform its obligations under this Agreement and all other agreements executed or to be executed in connection herewith. If Buyer assigns its rights hereunder to another entity pursuant to Section 14.1, that entity will be duly organized, validly existing, and in good standing under the laws of its state of organization, and shall have full power and authority to perform its obligations under this Agreement and all other agreements executed or to be executed in connection herewith. This Agreement, and all other agreements, certificates, and documents executed or to be executed by Buyer (or its assignee) in connection herewith, constitute or, when executed and delivered, will be duly authorized and will constitute legal, valid, and binding agreements of Buyer (or its assignee) enforceable against Buyer (or its assignee) in accordance with their respective terms.

6.2 Non-Violation; Consents. The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement, and the compliance with the provisions hereof do not and will not: (a) conflict with or violate any of the provisions of Buyer's or its assignee's organizational documents, (b) violate any material law, ordinance, rule or regulation, or any judgment, order, writ, injunction or decree, or similar command of any court, administrative or governmental agency, or other body applicable to Buyer and/or its assignee, (c) violate or conflict with or result in a breach of, or constitute a default under, any material instrument, agreement or indenture, or any mortgage, deed of trust, or similar contract to which Buyer and/or its assignee is a party or by which Buyer and/or its assignee is bound or affected, or (d) require the consent, authorization, or approval of, or notice to, or filing or registration with, any governmental body or authority, or any other third party.

6.3 Litigation. There are no actions, suits, or proceedings pending, or, to the knowledge of Buyer, threatened against or affecting Buyer that might adversely affect the power or authority of Buyer and/or its assignee to carry out the transactions to be performed by it hereunder.

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6.4 Brokers and Finders. Buyer has not engaged any broker or any other person or entity who would be entitled to any brokerage commission or finder's fee in respect of the execution of this Agreement and/or the consummation of the transactions contemplated hereby.

6.5 Concerning the Manufacturer. Buyer is not aware of any facts or circumstances that could reasonably be expected to be the basis for Manufacturer not to approve Buyer (or its assignee) as an authorized dealer.

ARTICLE VII
REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer as follows:

7.1 Organization; Power and Authority; Authorization. Seller is a corporation duly incorporated, validly existing, and in good standing under the laws of the State of South Carolina and has full corporate power and authority to own or use the properties it purports to own and use and to carry on its business as now being conducted. Seller has full corporate power and authority to execute and deliver this Agreement and all other agreements, certificates, and documents executed or to be executed by Seller in connection herewith, to consummate the transactions contemplated hereby and thereby, and to perform its obligations hereunder and thereunder. This Agreement, and all other agreements, certificates, and documents executed or to be executed by Seller in connection herewith, constitute or, when executed and delivered, will constitute legal, valid, and binding agreements of Seller enforceable against Seller in accordance with their respective terms.

7.2 Non-Violation; Consents. Except as set forth in Schedule 7.2, the execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement, and the compliance with the provisions hereof do not and will not: (a) conflict with or violate any of the provisions of Seller's Articles of Incorporation or Bylaws, each as amended; (b) violate any material law, ordinance, rule, or regulation or any judgment, order, writ, injunction, or decree or similar command of any court, administrative or governmental agency, or other body applicable to Seller, the Assets, the Chevrolet Business, or the Liabilities; (c) result in the creation or imposition of any Encumbrance upon any of the Assets; or (d) require the consent, authorization or approval of, or notice to, or filing or registration with, any governmental body or authority, or any other third party.

7.3 Actions, Suits, or Proceedings. Except as disclosed on Schedule 7.3, there are no actions, suits, or proceedings pending or, to the knowledge of Seller, threatened against Seller that might adversely affect the power or authority of Seller to carry out the transactions to be performed by Seller hereunder.

7.4 Title to Assets; Encumbrances. Except as disclosed on Schedule 7.4, Seller has good title to the Assets, free and clear of all liens (including tax liens), security interests, or other encumbrances of any kind and character, except Encumbrances for ad valorem personal property taxes not yet due and payable (collectively, "Encumbrances"). All of the Assets to be transferred hereunder will be transferred at the Closing free and clear of all Encumbrances.

7.5 Taxes. Except as disclosed on Schedule 7.5, Seller has filed all federal, state and local governmental tax returns required to be filed by Seller in accordance with the provisions of law pertaining thereto and has paid all taxes and assessments (including, without limitation of the foregoing, income, excise, unemployment, social security, occupation, franchise, property and import taxes, duties or

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charges, and all penalties and interest in respect thereof) required by such tax returns or otherwise to have been paid to date.

7.6 Brokers and Finders. Except as disclosed on Schedule 7.6, Seller has not engaged any broker or any other person or entity who would be entitled to any brokerage commission or finder's fee in respect of the execution of this Agreement and/or the consummation of the transactions contemplated hereby.

7.7 Compliance with Laws. Except as disclosed on Schedule 7.7, to the best of Seller's knowledge, Seller has operated the Chevrolet Business in compliance, in all material respects, with all applicable laws.

7.8 Environmental Disclosures. Except as and to the extent disclosed in Schedule 7.8 attached hereto, Seller warrants that, for so long as Seller has been operating the Chevrolet Business, Seller has not, to the best of Seller's knowledge, permitted any polluting, toxic, or Hazardous Substances (as defined below) to be used, generated, treated, stored, released, discharged, or disposed of on or from the Premises or on adjacent sites at any time, nor permitted any person to transport any such substances under or across the Premises, in either case in violation of, or so as to impose liability under, applicable environmental laws; provided, however, certain petroleum products and other substances commonly associated with the operation of an automobile dealership business are stored and handled by Seller in the ordinary course of business in compliance in all material respects with all environmental laws. As used herein, the term "Hazardous Substances" is defined as such term is defined in and pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. ("CERCLA"), or any applicable state or local environmental law, regulation or ordinance.

7.9 Conduct of Business. After the execution date of this Agreement and to the date of Closing, Seller shall continue to operate the Chevrolet Business in the ordinary course in accordance with customary industry practices. Seller shall share the Manufacturer's allocations and allotments of new vehicle requests with Buyer and shall substantially continue in the allocation of new vehicles to Seller in accordance with historical allocations.

7.10 Employment Matters.

(a) Except as set forth on Schedule 7.10, Seller has no written collective bargaining or employment agreements, bonus, deferred compensation, profit sharing, welfare or health benefit, or retirement plan or arrangement, whether or not legally binding, nor is Seller currently paying any pension, deferred compensation, or retirement allowance to anyone.

(b) Seller is not a party to any organized labor contract. Seller is not delinquent in payments to any of its employees for any wages, salaries, commissions, bonuses, or other direct compensation for any services performed by them to the date hereof or amounts required to be reimbursed to such employees.

(c) To the extent Seller has such plans, Seller is in compliance with the applicable requirements for its employee medical and benefit plan as set forth in the Internal Revenue Code (the "Code") and ERISA, including, without limitation, Section 4980B of the Code (as well as its predecessor provision, Section 162(k) of the Code) and Sections 601 through 608, inclusive, of ERISA, which provisions are hereinafter referred to collectively as "COBRA."

(d) There are no claims that Seller has committed any unfair labor practice nor does Seller have knowledge of any such practices. Seller has no knowledge of any organizational effort

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presently being made or threatened by or on behalf of any labor union with respect to employees of Seller;

(e) If applicable, Seller complied with the provisions of the Workers Adjustment and Retraining Notification Act (the WARN Act), 29 U.S.C. §2101-2109.

7.11 Vendor Payables. All of Seller's vendor invoices that are due and payable at Closing shall have been paid in full.

7.12 Customer Incentives. Seller has no free or unsupported by a third-party product customer incentive programs for consumers, such as tires for life, free oil changes for life, lifetime warranty, or the like other than those set forth in Schedule 7.12.

7.13 No Material Misrepresentation or Omission. No representation or warranty by Seller contained in this Agreement, and no statement contained in any instrument, list, certificate, or writing furnished to Buyer pursuant to the provisions hereof or in connection with the transactions contemplated hereby, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading. All of the financial data furnished to the Buyer by the Seller relating to the Seller and/or the Chevrolet Business has been consistently prepared, and is true and correct in all material respects.

ARTICLE VIII
CONDITIONS PRECEDENT TO BUYER'S OBLIGATIONS

The obligations of Buyer to perform this Agreement at the Closing are subject to the following conditions precedent, which must be fully satisfied at or before the Closing, unless waived in writing by Buyer.

8.1 Representations and Warranties. All of the representations and warranties of Seller herein contained must be true and correct in all material respects on and as of the Closing Date as if made on and as of the Closing Date, and Buyer must have received a certificate from Seller, dated the Closing Date, to such effect.

8.2 Compliance with Agreements. Each of the agreements or obligations required by this Agreement to be performed or complied with by Seller at or before the Closing must have been duly performed or complied with in all material respects, and Buyer must have received a certificate from Seller, dated the Closing Date, to such effect.

8.3 No Litigation. No action, suit, or proceeding must have been instituted by a governmental agency or any other third party to prohibit or restrain the sale contemplated by this Agreement or otherwise challenge the power and authority of the parties to enter into this Agreement or to carry out their obligations hereunder or the legality or validity of the sale contemplated by this Agreement.

8.4 Incorporation and Existence; Authorization. Seller must have furnished to Buyer (a) evidence to the reasonable satisfaction of Buyer with respect to the incorporation and existence of Seller; and (b) a copy of duly adopted resolutions of the sole shareholder and board of directors of Seller authorizing the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, certified by Seller as of the Closing Date.

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8.5 Manufacturer Approval. Manufacturer must have approved the transfer of the Chevrolet Business to Buyer (or its assignee as permitted under Section 14.1) and must have approved Buyer (or its assignee as permitted under Section 14.1) as an authorized dealer.

8.6 Consents and Approvals. Buyer and Seller must have made or obtained all requisite governmental filings, consents, or approvals as are required to consummate the transactions contemplated hereby, including a certificate of good standing with respect to Seller from the Secretary of State of South Carolina, dated as of a recent date prior to the Closing Date.

8.7 Bill of Sale, Etc. Seller must have executed, as appropriate, and delivered to Buyer the Bill of Sale, other documents of transfer of title contemplated hereby and any and all other documents necessary or desirable in connection with the transfer of the Assets, which documents must in all respects be in such form as may be reasonably required by Buyer.

8.8 Existing Lease Assignment/Sublease. Seller must have executed and delivered the Existing Lease Assignment or the Sublease Agreement, as the case may be, and Landlord must have consented to the Existing Lease Assignment or the Sublease Agreement, as the case may be, all in form and substance reasonably acceptable to Buyer.

8.9 Sublease Security. Buyer must have provided the Sublease Security, if the parties are required by Section 2.7 to execute and deliver the Hyundai/Genesis Sublease Agreement.

8.10 Dealer License. All governmental authorities, including but not limited to the South Carolina Secretary of State, and South Carolina DOR/Department of Motor Vehicles, have issued all necessary business and dealer licenses to Buyer to operate the Chevrolet Business at the Premises.

8.11 Ordinary Course. The Seller has continued to operate the Business in the ordinary course in accordance with customary industry practices, and Seller and the Manufacturer shall have substantially continued in the allocation of new vehicles to Seller in accordance with historical allocations. Manufacturer has not made any material changes in the customary or historic methods of operation or provided notice to Seller of taking, or proposing to take, any action that could have a material adverse impact on the Chevrolet Business, including relocating or closing the Business; provided, however, that Buyer and Seller acknowledge and agree that the conditions expressed in this sentence will not include any Manufacturer changes or action that (a) result in the relocation of any other dealership or the establishment or award of a new franchise for a dealership to a location that could have an impact on the Chevrolet Business, (b) implement (or propose to implement) any restructuring or reduction of Manufacturer's product line or production volumes, or (c) result in any supply chain disruptions.

8.12 Floorplan and Capital Financing. Buyer shall have obtained floorplan financing on terms satisfactory to Buyer in order to finance its inventory of motor vehicles. Buyer shall have obtained on terms and conditions satisfactory to it all of the financing it needs in order to consummate the transactions contemplated by this Agreement.

8.14 Sales Tax Compliance. Buyer shall have received a sales tax clearance certificate or its equivalent reflecting that Seller is current in its remittance of all sales and use taxes, and filings, due to the South Carolina Department of Revenue.

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ARTICLE IX
CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER

The obligations of Seller to perform this Agreement at Closing are subject to the following conditions precedent, which must be fully satisfied at or before the Closing, unless waived in writing by Seller:

9.1 Representations and Warranties. All of the representations and warranties of Buyer herein contained must be true and correct in all material respects on and as of the Closing Date as if made on and as of the Closing Date, and Seller must have received a certificate from Buyer (and, if applicable, Buyer's assignee as permitted under Section 14.1), dated the Closing Date, to such effect.

9.2 Compliance with Agreements. Each of the agreements or obligations required by this Agreement to be performed or complied with by Buyer or Buyer Principal at or before the Closing must have been duly performed or complied with in all material respects, and Seller must have received a certificate from Buyer (and, if applicable, Buyer's assignee as permitted under Section 14.1) and Buyer Principal, dated the Closing Date, to such effect.

9.3 No Litigation. No action, suit, or proceeding must have been instituted by a governmental agency or any third party to prohibit or restrain the sale contemplated by this Agreement or otherwise challenge the power and authority of the parties to enter into this Agreement or to carry out their obligations hereunder or the legality or validity of the sale contemplated by this Agreement.

9.4 Organization and Existence; Authorization. Buyer (and, if applicable, Buyer's assignee as permitted under Section 14.1) must have furnished to Seller (a) evidence to the reasonable satisfaction of Seller with respect to the organization and existence of Buyer (and, if applicable, Buyer's assignee) and (b) a copy of the resolutions duly adopted by the shareholders, directors, members, managers, or partners of Buyer (and, if applicable, Buyer's assignee) authorizing the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, certified by Buyer (and, if applicable, Buyer's assignee) as of the Closing Date.

9.5 Manufacturer Approval. Manufacturer must have approved the transfer of the Chevrolet Business to Buyer (or its assignee as permitted under Section 14.1) and must have approved Buyer (or its assignee as permitted under Section 14.1) as an authorized dealer.

9.6 Consents and Approvals. Buyer and Seller must have made or obtained all requisite governmental filings, consents, or approvals as are required to consummate the transactions contemplated hereby.

9.7 Payment of Closing Payment; Assumption Agreement. Buyer (or, if applicable, Buyer's assignee permitted under Section 14.1) must have tendered to Seller the Closing Payment and must have executed and delivered the Assumption Agreement.

9.8 Existing Lease Assignment/Sublease. Buyer (or, if applicable, Buyer's assignee permitted under Section 14.1) must have executed and delivered the Existing Lease Assignment, and Landlord must have consented to the Existing Lease Assignment and fully released Tenant from all of its obligations under the Existing Lease and fully released Seller and E.M. Stivers from all of their obligations under all guaranty and/or indemnity agreements relating to the Existing Lease (including the Existing Lease Guaranty), all in form and substance reasonably acceptable to Seller, or, alternatively Buyer must have executed and delivered the Sublease Agreement, and Landlord must have consented to the Sublease Agreement, all in form and substance reasonably acceptable to Seller.

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9.9 Lease/Sublease Guaranty. Buyer Principal must have executed and delivered the Lease Guaranty to Landlord in form and substance acceptable to Landlord or the Sublease Guaranty to Seller in form and substance reasonably acceptable to Seller.

9.10 Hyundai/Genesis Sublease Agreement. Buyer (or, if applicable, Buyer's assignee permitted under Section 14.1) must have executed and delivered the Hyundai/Genesis Sublease Agreement, if the parties are obligated by Section 2.7 to execute and deliver the same.

ARTICLE X
COVENANTS AND AGREEMENTS

10.1 Regarding the Manufacturer. Seller shall promptly notify Manufacturer regarding the transactions contemplated by this Agreement. Buyer shall submit to Manufacturer a completed application for the issuance of a franchise to operate an automobile dealership at the Premises not later than the earlier of (a) 5 Business Days after Buyer's receipt from Manufacturer of an application package or (b) 30 days from the date of this Agreement. Buyer shall diligently, and with best efforts, pursue such application with Manufacturer and shall promptly provide to Manufacturer any additional information or materials required or requested by Manufacturer in connection with such application. At Seller's request, Buyer shall, from time to time, promptly advise Seller of the status of Buyer's application with Manufacturer. Buyer authorizes Seller to contact Manufacturer, from time to time, to discuss the status of Buyer's application with Manufacturer. Effective as of the Closing, Seller shall terminate its Dealer Sales and Service Agreement with Manufacturer. Seller shall reasonably cooperate with Buyer in Buyer's efforts to obtain its own similar Dealer Sales and Service Agreement with Manufacturer; provided, however, nothing contained in this Agreement obligates Seller to advocate for or otherwise support Buyer in the event of Manufacturer's failure or refusal to approve Buyer or otherwise in connection with any dispute between Buyer and Manufacturer; provided further, however, Seller has no further obligation to Buyer under this Section 10.1 in the event that Manufacturer, or any person claiming by, through, or under Manufacturer, exercises any right of first refusal, preemptive right, or other similar right with respect to any of the Assets or this Agreement. Buyer and Seller acknowledge Manufacturer's right of first refusal contained in Seller's Dealer Sales and Service Agreement with Manufacturer. Buyer agrees not to dispute, resist, or protest in any way any exercise by Manufacturer of such right of first refusal.

10.2 Operation of Business in Ordinary Course. Until the Closing, Seller shall operate the Chevrolet Business only in the ordinary course of business consistent with Seller's past practices and the practices of similarly situated dealerships in the automobile industry.

10.3 Access to Assets; Indemnification Therefor.

(a) Until the Closing, Seller shall afford to Buyer, its attorneys, accountants, and such other representatives of Buyer as Buyer designates to Seller, free and full access, at such times as Seller determines in its sole discretion, to the Assets and the properties, books, and records of Seller, so that Buyer has an opportunity to make such investigation as it reasonably desires of the Assets, the Liabilities, and the Chevrolet Business.

(b) As part of its due diligence, Buyer may select an environmental consulting firm reasonably acceptable to Seller (the "Environmental Auditor") to perform, at Buyer's cost, a Phase I environmental site assessment of the Premises (the "Site Assessment"), which must be completed as soon as reasonably possible following the execution of this Agreement, but in no event later than the end of the Due Diligence Period (as defined in Section 12.1(e)). Buyer shall cause the Environmental Auditor to

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coordinate all visits to the Premises and conversations in connection with the Site Assessment with Edward M. Stivers, III, and to use reasonable efforts to minimize any disruption of the Chevrolet Business in performing the Site Assessment. Buyer shall promptly deliver to Seller copies of the report and other documentation generated by the Site Assessment.

(c) If the Site Assessment identifies any "recognized environmental conditions" as such term is defined in the American Society of Materials "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" Standard Designation E 1527-05, Buyer and Seller shall use their commercially reasonable efforts to negotiate an extension to the Due Diligence Period in order to accommodate such further environmental investigation and/or testing as is recommended by the Site Assessment, including, but not limited to, a Phase II environmental site assessment of the Premises, which negotiation will additionally include commercially reasonable efforts to negotiate which party will pay the costs for such further investigation and/or testing. Other than the Site Assessment, Buyer shall not conduct any environmental investigation without having first obtained the written consent of Seller.

(d) Except as may otherwise be agreed to by Buyer and Seller pursuant to Section 10.3(c), Buyer is solely responsible for all costs and expenses of its due diligence investigation of the Assets, the Liabilities, and the Chevrolet Business, including the costs of the Site Assessment to be performed pursuant to Section 10.3(b). Buyer shall indemnify Seller and hold Seller harmless from and against all liabilities or obligations, or claims in respect thereof, with respect to any personal injury or property damage arising out of or relating to said investigation by Buyer.

10.4 Satisfaction of Closing Conditions. Until the Closing, Buyer and Seller shall use their best efforts to obtain, and to cooperate with each other in making all notices and filings and in obtaining, all authorizations, approvals, licenses, permits, and other consents contemplated by Articles VIII and IX. Without limiting the generality of the foregoing, for purposes of inducing Landlord to give its consent either to the transactions contemplated by the Existing Lease Assignment or by the Sublease Agreement, as the case may be, Buyer shall provide to Landlord, with copies simultaneously to Seller, such information (including financial statements) regarding Buyer, Buyer Principal, and, if applicable, Buyer's assignee as permitted under Section 14.1 as Landlord may reasonably request.

10.5 Concerning Certain Consents. To the extent any contract or lease included in the Liabilities is not assignable without the consent of the other party or parties thereto, neither this Agreement nor the Assumption Agreement will constitute an assignment or attempted assignment thereof at any time prior to the receipt of such consent. If such consent is not obtained on or before the Closing, the parties shall proceed with the Closing and Buyer and Seller shall, after the Closing, cooperate in a mutually agreeable arrangement under which Buyer would obtain the benefits and bear the obligations under such contract or lease, including subcontracting, sub-licensing, or subleasing, until such time as Seller has obtained the necessary consent under such contract or lease, at which point, Seller shall assign, and Buyer shall assume, the obligations of Seller under such contract or lease. Buyer shall cooperate with Seller in Seller' efforts to obtain such consent, including providing any information and/or documentation reasonably requested by any other party or parties to such contract or lease, and Buyer and Seller shall share equally any fees or other payments required to be paid to such other party in order to obtain such consent.

10.6 Certificates of Title or Origin. Promptly after the Closing, Seller shall transfer to Buyer certificates of title or origin for all New Vehicles, Demonstrators, Loaners, and, if applicable, Used Vehicles and all of their respective registration lists, owner follow-up lists, and service files (subject to Section 5.6) on hand as of the Closing Date with respect to the Chevrolet Business.

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10.7 Prorations; Certain Taxes Payable by Buyer. Following the Closing, Buyer and Seller shall prorate the following taxes, charges, payments, and fees accruing or arising with respect to the Assets and/or the Chevrolet Business (collectively, "Charges") on a per diem basis and apportion them between Seller, on the one hand, and Buyer, on the other hand, as of the date of the Closing: personal property taxes; use taxes; excise taxes; intangible taxes; assessments with respect to the Assets; rents; utility charges (including water, sewer, electricity, and the like); license fees; prepaid advertising expenses; and employee payrolls. Seller is liable for that portion of the Charges relating to, or arising in respect of, periods prior to the Closing Date, and Buyer is liable for that portion of the Charges relating to, or arising in respect of, any period on or after the Closing Date. Notwithstanding the foregoing, Buyer is liable for, and shall pay, all sales, transfer, and similar taxes attributable to the sale or transfer of the Assets to Buyer hereunder.

10.8 Post Closing Access. Buyer grants Seller and Seller's employees and representatives reasonable access to the Premises and the Assets and the Liabilities after the Closing for any legitimate purpose expressed by Seller, such as (by way of example and not by limitation) for preparation of tax returns and the defense of any claims, and Buyer shall, at Seller' expense, make Buyer's employees who are former employees of Seller reasonably available to cooperate with Seller in the defense or prosecution of any claims arising out of the conduct of the Chevrolet Business prior to the Closing. In addition, Buyer shall reasonably cooperate with Seller in Seller' efforts to perform its continuing obligations to customers arising out of the operation of the Chevrolet Business prior to the Closing, including, without limitation, the reception and forwarding to a person or persons designated by Seller from time to time of customer requests for modifications or cancellations of service and/or insurance contracts.

10.9 Seller's Employees.

(a) Provided the Closing takes place, Buyer has the right, but not the obligation, to employ as of the Closing Date any or all of Seller's employees whose employment with such Seller is dedicated exclusively to the Chevrolet Business immediately prior to the Closing Date;

(b) Commencing as of the date of this Agreement and for a period of two years after the Closing or the termination of this Agreement for any reason, as the case may be, without the prior written consent of Seller, Buyer shall not, nor will Buyer suffer or permit any of its Affiliates (as defined below) to, directly or indirectly, hire or retain as an agent, consultant, or in any other capacity, any Restricted Employee (as defined below) who is, or at any time during the six month period prior to the date of such hire or retention was, an employee of Seller or any of Seller's Affiliates. As used herein: (i) the term "Affiliate" means any entity directly or indirectly controlling, controlled by, or under common control with the specified person, whether by stock ownership, agreement, or otherwise, or any parent, child, or sibling of such specified person, and the concept of "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities, by contract or otherwise; and (ii) the term "Restricted Employee" means any employee of Seller or any Seller Affiliate whose services are performed primarily in the Columbia, South Carolina market area (including any employee performing services with respect to the Hyundai/Genesis Business), other than employees of Seller employed by Buyer in accordance with the first sentence of this Section 10.9(a). The provisions of this Section 10.9(b) survive the termination of this Agreement for any reason.

(c) Buyer shall cause those employees of Seller hired by Buyer at any time on or after the Closing Date to be enrolled in Buyer's health care insurance coverage, effective as of the date of hire.

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(d) Buyer shall treat as strictly confidential, and not disclose to any third party without the previous written consent of the applicable employee, or as required by law, the personnel records of employees of Seller hired by Buyer and the information with respect to each of Seller's employees disclosed to Buyer (collectively, the "Confidential Employee Information"). Buyer may communicate the Confidential Employee Information to its lawyers and other professional advisors who need to know the same for purposes of rendering their advice and who agree to be bound by the provisions of this Section 10.9(d). The provisions of this Section 10.9(d) survive the termination of this Agreement for any reason.

10.10 Further Assurances. Upon request of Buyer, which may be made at any time and from time to time after the Closing, Seller shall do, execute, acknowledge, and deliver all such further acts, deeds, assignments, transfers, conveyances, powers of attorney, and assurances, in a form reasonably acceptable to Buyer, as may be reasonably required to convey and transfer to and vest in Buyer, and protect its rights, title, and interest in and enjoyment of, all the Assets.

10.11 Bulk Sales. Buyer and Seller each hereby waive the requirements of all applicable bulk sales or other similar laws with respect to the transactions contemplated hereby.

10.12 Disposition of Hyundai/Genesis Business. Buyer acknowledges that Seller desires to sell the Hyundai/Genesis Business to a third party and that Seller is currently seeking a purchaser for the same. Buyer agrees that, to the extent any terms of this Agreement or of any other document, instrument, or agreement executed in connection herewith could be interpreted as prohibiting or limiting in any way Seller from discussing, negotiating, or completing a sale of the Hyundai/Genesis Business to a potential purchaser, such terms are not to be so interpreted.

10.13 No Publicity. Except as may be required by law or as necessary in connection with the transactions contemplated hereby, no party shall, on or before the Closing Date, (a) make any press release or other public announcement relating to this Agreement or the transactions contemplated hereby, without the prior approval of the other parties hereto or (b) otherwise disclose the existence and nature of this Agreement or the negotiations regarding the transactions contemplated hereby to any person or entity other than such party's accountants, attorneys, agents, and representatives, all of whom are subject to this nondisclosure obligation as agents of such party. Notwithstanding the foregoing, Seller and Seller's agents and attorneys may disclose such information concerning this Agreement and the transactions contemplated hereby as may be necessary or required in order to discuss, negotiate, and consummate a sale of the Hyundai/Genesis Business as contemplated by Section 10.12, provided Seller notifies the recipient(s) of the terms of this Section 10.13 and requests that the recipient(s) abide by the same. The parties shall cooperate with each other in the preparation and dissemination of any public announcements of the transactions contemplated by this Agreement that are made on or before the Closing Date. The provisions of this Section survive the termination of this Agreement for any reason. The timing and content of all public announcements (excluding disclosures required by law) relating to the execution of this Agreement and the consummation of the transactions contemplated hereby shall be approved by both Buyer and Seller prior to the release of such public announcements, and each party agrees to cooperate with the other party as appropriate to comply with all applicable laws. Subsequent to the Closing Date, Buyer may make such announcements and/or advertisements as Buyer, in its sole discretion, deems necessary to all customers and/or potential customers and suppliers of the Chevrolet Business.

10.14 Confidentiality. Each party shall maintain in confidence, and shall cause their respective shareholders, directors, officers, members, managers, partners, employees, agents, and advisors to maintain in confidence, any written, oral, or other information obtained from the other party in connection with this Agreement or the transactions contemplated hereby, unless: (a) such information is already known to such party or to others not bound by a duty of confidentiality or such information becomes

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publicly available through no fault of such party; (b) the use of such information is necessary or appropriate in making any filing or obtaining any consent or approval required for the consummation of the transactions contemplated hereby; or (c) the furnishing or use of such information is required by legal proceedings. If the transactions contemplated hereby are not consummated, each party shall return or destroy as much of such written information as the other party may reasonably request. The confidentiality provisions of this Section survive the termination of this Agreement for any reason.

10.15 Buyer's Financing. From the date of this Agreement and until the Closing, Buyer shall diligently pursue, in good faith and with best efforts, the floorplan and other financing described in Section 8.12 that Buyer needs in order to consummate the transactions described in this Agreement.

10.16 Redirection of Website Traffic. No later than the Closing Date, Seller shall modify all of the websites that it has used exclusively in connection with the Chevrolet Business at any time prior to the Closing (collectively, the "Chevrolet Columbia Websites") so that all persons visiting such websites are automatically re-directed to the website of Buyer. In connection therewith, at or before Closing, Buyer shall furnish Seller with Buyer's website address so that Seller may modify its Chevrolet Columbia Websites as required by this Section 10.16. Seller shall cause all of its Chevrolet Columbia Websites to continuously re-direct all persons visiting the same to Buyer's website for a continuous period of 6 months from and after the Closing Date, and at the end of such 6 month period Seller shall cancel service for all of the Chevrolet Columbia Websites and shut them down for a period of one year from the Closing Date.

ARTICLE XI
INDEMNIFICATION

11.1 Indemnification by Seller. All representations, warranties, covenants, and agreements of Seller contained herein, or in any agreement or certificate executed and delivered by Seller pursuant to this Agreement, will survive the Closing for a period of one year from the Closing Date. Seller hereby indemnifies and holds harmless Buyer, Buyer Principal, and, if applicable, Buyer's assignee permitted under Section 14.1 and their respective shareholders, directors, officers, members, managers, partners, employees, agents, successors, and assigns (collectively, "Buyer Indemnitees"), from and against all losses, damages, liabilities, obligations, assessments, suits, actions, proceedings, claims, or demands, including costs, expenses, and fees (including reasonable attorneys' fees and expert witness fees) incurred in connection with, suffered by any of them or asserted against any of them or the Assets (collectively, "Buyer's Losses"), arising out of or based on (a) the failure of any representation or warranty of Seller contained herein, or in any agreement or certificate executed and delivered by Seller in connection herewith, to be true and correct in all material respects when made, (b) the breach in any material respect of any covenant or agreement of Seller contained in this Agreement, (c) any liability or obligation of Seller other than the Liabilities, or (d) any arrangements or agreements made or alleged to have been made by Seller with any broker, finder, or other agent in connection with the transactions contemplated hereby.

11.2 Indemnification by Buyer. All representations, warranties, covenants, and agreements of Buyer, Buyer Principal, and, if applicable, Buyer's assignee permitted under Section 14.1 (collectively, "Buyer Indemnitors" and, individually a "Buyer Indemnitor") contained herein, or in any agreement or certificate executed and delivered by any of the Buyer Indemnitors pursuant to this Agreement, will survive the Closing for a period of one year from the Closing Date, except that the provisions of Section 10.9(b) survive the Closing for a period of two years. Each Buyer Indemnitor hereby jointly and several indemnifies and holds harmless Seller, Tenant, E.M. Stivers and their respective shareholders, directors, officers, members, managers, partners, employees, agents, successors and assigns (collectively, "Seller

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Indemnitees"), from and against all losses, damages, liabilities, obligations, assessments, suits, actions, proceedings, claims, or demands, including costs, expenses, and fees (including reasonable attorneys' fees and expert witness fees) incurred in connection with, suffered by any of them, or asserted against any of them (collectively, "Seller's Losses"), arising out of or based upon (a) the failure of any representation or warranty of any Buyer Indemnitor contained herein, or in any agreement or certificate executed and delivered by any Buyer Indemnitor in connection herewith, to be true and correct in all material respects when made, (b) the breach in any material respect of any covenant or agreement of any Buyer Indemnitor contained in this Agreement, (c) the Liabilities and any liabilities or obligations arising out of the operation of the Assets or the Chevrolet Business after the Closing, or (d) any arrangements or agreements made or alleged to have been made by any Buyer Indemnitor with any broker, finder, or other agent in connection with the transactions contemplated hereby.

11.3 Indemnification Procedures Regarding Third Party Claims. If any party to this Agreement becomes aware of or receives notice of any third party claim or the commencement of any third party action or proceeding with respect to which another party ("Indemnitor") is obligated to provide indemnification under this Article, the party entitled to indemnification ("Indemnitee") shall promptly give Indemnitor notice thereof. Such notice will not be a condition precedent to any liability of Indemnitor under the provisions for indemnification contained in this Article, unless (and only to the extent that) failure to give such notice materially prejudices the rights of Indemnitor with respect to such claims, actions, or proceedings. Indemnitor may compromise or defend, at Indemnitor's own expense, and by Indemnitor's own counsel reasonably acceptable to Indemnitee, any such matter involving the asserted liability of Indemnitee; provided, however, that no compromise or settlement thereof may be effected by Indemnitor without Indemnitee's consent (which will not be unreasonably withheld or delayed); and further provided that an Indemnitor may not undertake the defense of any such third party claim unless (i) the claim is solely for monetary damages, and (ii) Indemnitor confirms in writing to Indemnitee (and to such third party), prior to undertaking such defense or prior to making such compromise or settlement, that the matter concerning indemnification is indemnifiable by Indemnitor. If Indemnitor elects not to compromise or defend such matter or if Indemnitor may not undertake the defense of such third party claim, then Indemnitee, at Indemnitor's expense and by Indemnitee's own counsel, may defend such matter, but regardless of whether or not Indemnitor elects to assume the defense of any such matter Indemnitee may not compromise the defense thereof without the prior written consent of Indemnitor, which consent will not be unreasonably withheld or delayed. In any event, Indemnitee, Indemnitor, and Indemnitor's counsel (and, if applicable, Indemnitee's counsel) shall cooperate in the compromise of, or the defense against, any such asserted liability. If Indemnitor chooses to defend any claim, Indemnitee shall make available to Indemnitor any books, records, or other documents within Indemnitee's control that are reasonably necessary or appropriate for such defense. The foregoing indemnity procedures are not to be read as a limitation on any party's right to seek indemnification under this Article for matters other than third-party initiated claims or demands.

11.4 Certain Limitations on Indemnification. No Indemnitee pursuant to Section 11.1 or 11.2, as the case may be, is entitled to any recovery for any Buyer's Losses or Seller's Losses, as the case may be (in either case, "Losses"), suffered by such Indemnitee as a result of a breach of a representation warranty, covenant, or agreement under this Agreement by Indemnitor, unless and until the aggregate amount of all Losses suffered by such Indemnitee as a result of all breaches of representations, warranties, covenants, and agreements hereunder exceed a cumulative aggregate total of $25,000 (the "Basket"), in which event the Losses may be claimed, but only to the extent that they exceed the Basket. For purposes of this Section, Buyer Indemnitees will be considered as one Indemnitee. Notwithstanding any other provision of this Agreement, the aggregate total liability of Seller under this Article will not exceed $2,000,000. In addition, Buyer, for itself and on behalf of its assignee, and Buyer Principal acknowledge and agree that, notwithstanding any other provision of this Agreement, Seller's indemnification obligation

EX. E

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will not apply to any breach of a representation or warranty of Seller of which Buyer (or its assignee) or Buyer Principal had actual knowledge prior to the Closing.

ARTICLE XII
TERMINATION

12.1 Termination. Notwithstanding any other provision of this Agreement, this Agreement may be terminated at any time:

(a) By the mutual written consent of Buyer and Seller;

(b) By Buyer, prior to the Closing Date Deadline in the event of any material breach by Seller of any of its representations, warranties, covenants, or agreements contained herein, and such breach has not been cured promptly after written notice by Buyer to Seller;

(c) By Seller, prior to the Closing Date Deadline in the event of any material breach by Buyer (or its assignee as permitted under Section 14.1) or Buyer Principal of any of their respective representations, warranties, covenants or agreements contained herein, and such breach has not been cured promptly after written notice by Seller to Buyer;

(d) At any time after the Closing Date Deadline, by written notice by Buyer or Seller to the other party hereto if the Closing has not been completed on or before the Closing Date Deadline;

(e) By Buyer, by written notice to Seller, at any time before the 31st day following the date of this Agreement (or such later date if extended by written agreement of Buyer and Seller pursuant to the terms of Section 10.3(c) (as may be extended, the "Due Diligence Period"), if Buyer is not satisfied with the results of its due diligence review during this period; or

(f) By Seller, by written notice to Buyer prior to the Closing Date Deadline, in the event Manufacturer declines to approve the transfer of the Chevrolet Business to Buyer (or its assignee as permitted under Section 14.1) or to approve Buyer (or its assignee as permitted under Section 14.1) as an authorized dealer;

provided, however, no party may terminate this Agreement pursuant to clauses (b), (c) or (d), above if such party (including an assignee of Buyer permitted under Section 14.1) is in material breach of any of its representations, warranties, covenants or agreements contained herein; provided further, however, if Manufacturer, or any person claiming by, through or under Manufacturer, exercises any right of first refusal, preemptive right, or other similar right, with respect to any of the Assets or this Agreement, this Agreement may not be terminated by Buyer pursuant to clause (d), above, but Buyer will be entitled to a return of the Escrow Deposit upon the execution by Buyer and Seller of a mutual release from this Agreement and execution by Buyer of any requested assignment of this Agreement by Buyer to Manufacturer or such person.

12.2 General Effect of Termination. In the event of termination of this Agreement pursuant to Section 12.1, this Agreement will be of no further force or effect; provided, however, that any termination pursuant to Section 12.1 will not relieve any party of (i) any liability or obligation under Sections 12.3 through 12.5 or (ii) any liability or obligation hereunder that expressly provides for its survival after such termination.

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12.3 Termination as a Result of Buyer's Breach. If this Agreement is terminated by Seller pursuant to Section 12.1(c), or Section 12.1(d) (where the failure to complete the Closing on or before the Closing Date Deadline is due to Buyer's (or its assignee's) or Buyer Principal's material breach of any of their respective representations, warranties, covenants or agreements under this Agreement), which breach or default, if curable, is not cured by Buyer within ten (10) Business Days after receipt of written notice of default from Seller, then Seller will be entitled, subject to the following terms of this Section, to pursue any or all of its rights and remedies available to it at law or in equity, whether such right or remedy is based on statute, case law, or otherwise. Seller shall be entitled to seek an action for damages and/or, at Seller's election, an action for specific performance. Buyer agrees that it is estopped from asserting in any action to enforce the provisions of the covenants contained herein that Seller has an adequate remedy at law and therefore is not entitled to specific performance or injunctive relief. Notwithstanding anything contained in this Section 12.3, in any action for damages by Seller against Buyer under this Section 12.3, Buyer's aggregate monetary liability to Seller will be limited to a maximum of $100,000.

12.4 Termination as a Result of Seller's Breach. If this Agreement is terminated by Buyer pursuant to Section 12.1(b), or Section 12.1(d) (where the failure to complete the Closing on or before the Closing Date Deadline is due to Seller's material breach of any of its representations, warranties, covenants or agreements under this Agreement), which breach or default, if curable, is not cured by Seller within ten (10) Business Days after receipt of written notice of default from Buyer, then Buyer will be entitled, subject to the following terms of this Section, to pursue any or all of its rights and remedies available to it at law or in equity, whether such right or remedy is based on statute, case law, or otherwise. Buyer shall be entitled to seek an action for damages and/or, at Buyer's election, an action for specific performance. Seller agrees that it is estopped from asserting in any action to enforce the provisions of the covenants contained herein that Buyer has an adequate remedy at law and therefore is not entitled to specific performance or injunctive relief. Notwithstanding anything contained in this Section 12.4, in any action for damages by Buyer against Seller under this Section 12.4, Seller's aggregate monetary liability to Buyer will be limited to a maximum of $100,000.

12.5 Termination for Other Reasons. If this Agreement is terminated for a reason other than as set forth in Section 12.3, Buyer will be entitled to return of the Escrow Deposit by the Escrow Agent.

ARTICLE XIII
REMEDIES

13.1 Remedies. The remedies of the parties under this Agreement are as follows:

(a) If the Closing has occurred, and absent a showing of fraud by a party in connection with any representation, warranty, covenant, or agreement given or made by such party in this Agreement, the sole and exclusive remedy of a party against another party for monetary damages for breach of any representation, warranty, covenant or agreement contained in this Agreement will be the indemnification obligation of such breaching party under the applicable provisions of Article XI; provided, however, that nothing contained in this Section 13.1(a) or Article XI will limit a party's right to seek injunctive or equitable relief in connection with the enforcement of this Agreement after the Closing.

(b) If the Closing has not occurred, the remedies of a party against another party for all claims related to this Agreement will be the remedies available to that party as are set forth in Sections 12.3 through 12.5.

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ARTICLE XIV
MISCELLANEOUS

14.1 Assignment. Except as provided in this Section, this Agreement is not assignable by any party without the prior written consent of the other parties. Notwithstanding the foregoing, Buyer may assign this Agreement, without the consent of Seller, to a business entity controlled by Buyer; provided, said assignment is in a writing reasonably satisfactory to Seller and the assignee shall assume all obligations and agreements of Buyer hereunder, provided further, that Buyer will not be released from, and shall continue to be liable with respect to, its obligations and agreements hereunder as fully as if such assignment had not been made. Any party may assign this Agreement, without the consent of the other party hereto, as collateral security, and the parties hereto agree to execute and deliver any acknowledgment of such assignment as may be required by any lender to any party hereto. If this Agreement is assigned by Buyer pursuant to this Section, in addition to Buyer's required deliveries pursuant to Section 9.4, Buyer shall make similar deliveries to Seller with respect to Buyer's assignee.

14.2 Governing Law; Jurisdiction. The interpretation and construction of this Agreement, and all matters relating hereto, is governed by the laws of the State of South Carolina. If jurisdiction is available in federal court, then the sole and exclusive venue for any action between the parties arising out of or related in any way to this Agreement will be the United States District Court for the District of South Carolina, Columbia Division, and each party hereto hereby (i) irrevocably consents to personal jurisdiction in the United States District Court for the District of South Carolina, Columbia Division, and (ii) irrevocably waives any objection as to the venue of any such action or proceeding brought in such court is an inconvenient forum. If any action covered by this clause is filed in a state court and thereafter moved to federal court, the parties hereby consent to the transfer of venue to the United States District Court for the District of South Carolina, Columbia Division. If jurisdiction is not available in federal court, then the sole and exclusive venue for any action between the parties arising out of or in any way related to this Agreement will be the state courts of general jurisdiction located in Columbia, South Carolina, and each party hereby (i) irrevocably consents to personal jurisdiction in the state courts of Columbia, South Carolina and (ii) irrevocably waives any objection as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum. **EACH PARTY, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL OF THEIR CHOICE, KNOWING AND VOLUNTARILY, FOR THEIR MUTUAL BENEFIT IRREVOCABLY AND ABSOLUTELY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY DISPUTE BETWEEN THE PARTIES ARISING OUT OF OR RELATED IN ANY WAY TO THIS AGREEMENT.** This jury trial waiver is intentionally made, and both parties agree that they had equal bargaining power and specifically negotiated this jury trial waiver.

14.3 Severability. If any provision, or part thereof, of this Agreement is held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions, or parts thereof, will not in any way be affected or impaired thereby.

14.4 Fees and Expenses. Except as otherwise specifically provided in this Agreement, each of the parties is responsible for the payment of such party's fees, costs, and expenses incurred in connection with the negotiation and consummation of the transactions contemplated hereby.

14.5 Amendments; Merger Clause. This Agreement, including the exhibits and schedules referred to herein that form a part hereof, contains the entire understanding of the parties with respect to the subject matter contained herein and therein. This Agreement may not be amended except by a writing executed by all of the parties. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter, including specifically the Letter of Intent between

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Buyer and Seller dated May 4, 2020. The parties acknowledge and agree that they are not relying on any statement, fact, or representation other than those expressly set forth in this Agreement and its schedules.

14.6 Waiver. To the extent permitted by applicable law, no claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other parties. Any waiver by a party of a breach of any provision of this Agreement will not operate or be construed as a waiver of any subsequent breach of such provision or any other provision of this Agreement. Neither the failure nor any delay by any party in exercising any right or power under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right or power, and no single or partial exercise of any such right or power will preclude any other or further exercise of such right or power or the exercise of any other right or power.

14.7 Notices. Each party giving or making any notice, request, demand, or other communication (each, a "notice") pursuant to this Agreement shall give the notice in writing, cause the notice to be signed by the party's authorized representative, and deliver the notice either by (a) personal delivery, with signed receipt requested, (b) registered or certified mail, postage prepaid, with return receipt requested, or (c) nationally recognized overnight courier, all fees prepaid, with signature or receipt requested, in each case addressed to the receiving party at the address listed below for the receiving party or to any other address designated by the receiving party in a notice in accordance with this Section:

If to Seller, to:

Stivers Brothers Automotive, Inc.
4000 Eastern Boulevard
Montgomery, Alabama 36116
Attention: Edward M. Stivers, III

With a copy to:
McBride Law LLC
1784 Taliaferro Trail, Suite B
Montgomery, Alabama 36117
Attention: Richard L. McBride Jr.
Email: rick@mcbridelawllc.com

With a copy to:
Rushton, Stakely, Johnston & Garrett, P.A.
184 Commerce Street
Montgomery, Alabama 36104
Attention: William I. Eskridge
Email: wie@rushtonstakely.com

If to Buyer or Buyer Principal, to:

Jim Hudson Chevrolet, Inc.
720 Gracern Road, Suite 101
Columbia, South Carolina 29210
Attention: Keith E. Hudson

Jim Hudson Chevrolet, Inc.
720 Gracern Road, Suite 101
Columbia, South Carolina 29210
Attention: Karyn Heimes

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With a copy to:
The McKay Firm, P.A.
1303 Blanding Street
Columbia, South Carolina 29201
Attention: C. E. "Skip" Hardin, Jr.
Email: chardin@mckayfirm.com; and
bjetzke@mckayfirm.com

A notice is effective only if the sending party has complied with the provisions for giving notice in this Section, and the receiving party has received the notice. A notice is deemed received by the receiving party as follows: (1) if delivered in person or sent by registered or certified mail or by national recognized overnight courier, then upon receipt as indicated by the date on the signed receipt; or (2) if the receiving party rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, then upon that rejection, refusal, or inability to deliver. Provided, however that no notice shall be deemed effective unless copies of any notices given to any party hereunder shall also be provided to its counsel by email *and* provided in the identical manner as such notice is being given to the party, addressed as designated above.

14.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which is to be deemed an original, and all of which are be taken to be one and the same instrument, and a facsimile or electronic (i.e., PDF) copy of an executed counterpart will constitute the same as delivery of the original of such executed counterpart and any signature so transmitted will be the binding signature of the signing party. Any signature page of this Agreement (whether original, facsimile, or electronic) may be detached from any counterpart of this Agreement (whether original, facsimile, or electronic) without impairing the legal effect of any signatures thereof and may be attached to another counterpart of this Agreement (whether original, facsimile, or electronic) identical in form hereto but having attached to it one or more additional signature pages (whether original, facsimile, or electronic), with the same effect as if all signature pages of this Agreement were executed on one and the same counterpart.

14.9 Permitted Successors and Assigns; No Third-Party Beneficiaries. Subject to Section 14.1, this Agreement is binding upon, inures to the benefit of and is enforceable by the respective successors and assigns of the parties. Nothing in this Agreement, expressed or implied, is intended or is to be construed to confer upon or give to any employee of Seller, or any other person, firm, corporation, or legal entity, other than the parties and their successors and permitted assigns, any rights, remedies, or other benefits under or by reason of this Agreement.

14.10 Headings. The article and section headings contained in this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement.

14.11 Interpretation and Construction. The parties have negotiated the terms of this Agreement, reviewed this Agreement carefully, and been given the opportunity to discuss it with their respective legal counsel. The parties intend that each word, phrase, and sentence and other part of this Agreement is to be given its plain meaning, and that rules of interpretation or construction of contracts that would construe any ambiguity of any part of this Agreement against the draftsman, by virtue of being the draftsman, do not apply.

[Signatures Begin on the Next Page]

ELECTRONICALLY FILED - 2023 May 17 4:25 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

"BUYER":

JIM HUDSON CHEVROLET, INC.,
A SOUTH CAROLINA CORPORATION

By: Keith E. Hudson

Name: Keith E. Hudson

Its: President

"BUYER PRINCIPAL":

Keith E Hudson

Keith E. Hudson

"SELLER":

STIVERS BROTHERS AUTOMOTIVE, INC.,
A SOUTH CAROLINA CORPORATION

By: _____

Edward M. Stivers, III
President

ELECTRONICALLY FILED - 2023 May 17 4:25 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

"BUYER":

JIM HUDSON CHEVROLET, INC.,
A SOUTH CAROLINA CORPORATION

By: Keith E. Hudson

Name: Keith E. Hudson

Its: President

"BUYER PRINCIPAL":

Keith E Hudson

Keith E. Hudson

"SELLER":

STIVERS BROTHERS AUTOMOTIVE, INC.,
A SOUTH CAROLINA CORPORATION

By: _____

Edward M. Stivers, III
President

EX. F

ELECTRONICALLY FILED - 2023 May 17 4:25 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

THE HAIG REPORT

Q4 | 2019

TRENDS IN AUTO RETAIL AND THEIR IMPACT ON DEALERSHIP VALUES



- *Economic conditions were highly favorable at the end of 2019*
- *Profits were up for public and private dealers*
- *Buy-sells were up 44% in Q4 2019 but down 13% on the year due to a slow start*
- *Public company spending jumped 73% in Q4 2019 but down 9% on the year due to a slow start*
- *More transactions involved single stores or very small groups (lower risk tuck-ins)*
- *Blue sky values are shifting*
- *Buy-sell activity was picking up as buyers became more confident*
- *THE CORONAVIRUS WILL ALTER THESE TRENDS. SEE PAGES 14 AND 17 FOR OUR OUTLOOK ON THE INDUSTRY AND BUY-SELLS*

HAIG PARTNERS

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reimburse up to 75% of marketing costs associated with EVs. This could be a good time to invest in the franchise particularly in areas like CA as Volkswagen will be a future leader in the EV industry. **Same multiple range: 3.0x-4.0x.**

Kia

Kia sales rose 4.4% on the year, supported almost entirely by the 2020 North American Utility Vehicle of the Year, the Telluride. We have heard of big grosses on Tellurides – almost Porschesque. As Kia's mix of cars/CUVs continues to improve, dealers are seeing an improvement in dealership profitability and they are happier than they have been for several years. There is still room for improvement regarding fixed operations and F&I. **Same multiple range: 3.0x-3.75x.**

Hyundai

Hyundai saw a 3.2% increase in 2019 sales which can be attributed to the new full size SUV, the Palisade. Like its Kia cousin, the Palisade is selling well over sticker in many markets. Hyundai's first pickup is also scheduled to be released in 2021. We hope it performs more like the Tacoma than the Frontier. The company recently released its Complimentary Maintenance program, which provides new vehicle owners with free routine maintenance for three years/36,000 miles. Dealers have a lot to celebrate, including a promising product pipeline and a recently revamped dealer compensation program. Some, however, have concerns that CEO Jose Munoz will try to establish some of the stair-step programs and wholesale pressure that existed at Nissan when he was the North American leader there and caused that franchise deep distress. **Same multiple range: 3.0x-3.5x.**

Mazda

Mazda sales have fallen 7.3% throughout 2019. The brand has decided to focus more on upscale models than its current mainstream models, but this transition is not easy for any brand in any industry. Early sales of the new CX-30 crossover are encouraging, so some dealers are optimistic that 2020 will see an increase in sales momentum. Despite some attractive products, few dealers target this brand. We have been involved in four group transactions over the past year with Mazda stores and they brought little value. **Multiple reduced by 0.5x on top and 0.75x on bottom of range: 2.0x-3.0x.**

Nissan

Nissan sales slumped 8.7% in 2019 as the company continues to experience the lingering effects of the Ghosn scandal and dealers' distaste for its business model. Corporate turmoil has led to an aging lineup, further dragging down dealer profits. The new CEO, Makoto Uchida, has noted that restructuring will be more extensive than originally planned. The company has pledged to speed-up new product launches and offer the newest portfolio of all Japanese brands in a year. Higher incentives, advertising and financial incentives have helped sales in the past 45 days. Some Nissan stores across the country are generating decent profits, but many are losing money. Management in the U.S. has not yet stabilized, giving concern to many dealers. It doesn't feel like we have hit the bottom at Nissan yet. **Multiple reduced by 0.75x on top and bottom of range: 2.0x-3.0x.**

Domestic Franchise Blue Sky Multiples

(Note: The multiples paid for domestic franchises will likely be higher in markets like Texas where trucks sell well and lower in markets like California where imports dominate.)

Ford

Ford sales dropped 3.7% in 2019 largely due to car sales dropping 29% as it retreats from this segment to focus on trucks and SUVs. Many dealers applaud the promotion of Jim Farley to COO, but investors have been shunning the stock due to Ford's listless performance. On the bright side, the new Ranger has been selling well and reservations for the upcoming electric Mustang Mach-E crossover are full. With so many Ford stores on the market and little momentum, we are reducing our valuation slightly. **Multiple reduced by 0.5x on top and bottom of range: 3.0x-4.0x.**

Chevrolet

Chevrolet sales decreased by 3.8% in 2019. The strike hurt a little bit, but most dealers had adequate inventory to meet demand. A number of dealers complain that GM is spending too much capital and engineering resources on EVs and autonomous vehicles and not enough on products that people want to buy today. Some help is coming, however. Consumers are excited about the upcoming Corvette. Demand is five times more than what GM predicted and the car was recently named the 2020 North American Car of the Year. High grosses on Corvettes will boost many bottom lines around the country when they begin to show up in meaningful numbers. Redesigned full-size Tahoes and Suburbans should also arrive this year. With so many Chevrolet stores on the market and little momentum, we are reducing our valuation slightly. **Multiple reduced by 0.25x on top and bottom of range: 3.25x-4.25x.**

FCA (Chrysler-Jeep-Dodge-Ram-Fiat)

Sales are down 1.4% in 2019. Chrysler sales dropped 23.5% and Fiat plummeted 40.7%, and Jeep sales are down 7.2%. The highly anticipated Jeep Gladiator's sales slowed down after a hot start, but dealers plan to challenge other brands in volume with heavy transaction discounts made possible by the model's high-profit margin. Ram was the only brand that realized an increase in sales at 17.7%. Ram has enjoyed high margins with some of its larger trucks and is looking to increase future volume as well. Executives are enthusiastic about a favorable model mix and high production efficiency but are looking to improve North American volume. **Same multiple range: 3.25x-4.25x.**

Buick-GMC

Buick sales were flat throughout 2019, with less than 0.1% growth. GMC sales increased by 1.5%. Despite its tiny market share, Buick placed first in J.D. Power's 2019 U.S. Sales Satisfaction Index Study for mass-market brands. Dealers have reported lost SFE incentive money, but the brand has listened and is attempting to improve on dealer issues. New car margins continue to decrease, but dealers are optimistic that an upcoming enhanced portfolio will improve profitability. Redesigned Yukons are on the way. With so many B-GMC stores on the market and little momentum, we are reducing our valuation slightly. **Multiple reduced by 0.25x on top and bottom of range: 3.0x-4.0x.**

EX. G

ELECTRONICALLY FILED - 2023 May 17 4:25 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4001934

THE HAIG REPORT

Q3 | 2021

TRENDS IN AUTO RETAIL AND THEIR IMPACT ON DEALERSHIP VALUES

- *The Chipdemic continues to create extraordinarily favorable conditions in auto retail*
- *The average privately-owned dealership made $3.4M over the last twelve months ending Sep'21, 2.4x profits in 2019*
- *Public company spending on US auto acquisitions has exceeded $2.8B YTD Q3*
- *Public company spending on US auto acquisitions may reach $8B by year end 2021, 3.4x higher than 2020*
- *Blue sky values rose an estimated 61% from the end of 2019 and are at record-high levels*
- *Public equity valuations are 108% higher than they were before the Pandemic*

HAIG PARTNERS

INTEGRITY. CONFIDENTIALITY. EXPERIENCE.

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MID-LINE IMPORT FRANCHISE BLUE SKY MULTIPLES

Toyota

Toyota announced a 27.5% increase in the third quarter of 2021 YTD compared to the same time last year. In a recent NADA survey, dealers ranked Toyota #2 behind Lexus in terms of their optimism about the franchise. We have had the privilege of selling six Toyota dealerships this year and enjoyed strong offers on each one. **Same multiple range on average adjusted pre-tax profit: 6.25x-7.25x.**

Honda

Honda sales in YTD Q3 2021 were up 18.9%. Although it has been losing share to Toyota, Hyundai and Kia recently, dealers are feeling good about Honda, ranking it #5 in terms of their optimism for the future in a recent NADA survey. Their products remain strong sellers and the business model is nicely balenced. **Same multiple range on average adjusted pre-tax profit: 6.0x-7.0x.**

Subaru

Subaru reported a 6.0% increase in the first nine months of 2021 compared to the same period in 2020. This brand has suffered more than most in terms of production shortages as consumer demand remains very solid. Subaru has among the lowest days supply of any franchise. Dealers are very keen on US management and the overall business model, ranking it #4 in the overall rating category. We have been involved in the sale of several Subaru stores recently and demand was high. **Same multiple range on average adjusted pre-tax profit: 6.0x-7.0x.**

VW

Volkswagen saw sales increase by 25.6% in the first nine months of 2021 compared to the same period in 2020. SUV sales were up 58.2%, getting VW closer to the industry average. The inventory shortage helped VW dealers more than most since its margins have long been compressed. VW is highly focused on EVs, but it remains to be seen how this strategy will play out. If consumers choose to buy EVs then VW could take significant share since it will likely have more models for consumers than most other brands. But if not, VW dealers will have little to sell. **Same multiple range on average adjusted pre-tax profit: 3.0x-4.0x.**

Kia

Kia sales increased 29.7% in the first nine months of 2021 compared to the same time period last year. Kia's recovery from the Pandemic has been quicker than most due to good products and adequate inventory. Dealers have become highly enamored with Kia recently, ranking it just behind Lexus and Toyota in terms of their optimism for the future. Kia dealership profits have jumped substantially thanks to higher volumes and better products. **Higher multiple range on average adjusted pre-tax profit: 3.75x-4.75x.**

Hyundai

Hyundai enjoyed a 36.3% sales increase in the first nine months of 2021 compared to the same period in 2020, leading all franchises that we track. Hyundai's recent success is thanks to its new CUVs, including the full-sized Palisade which dealers struggle to keep in stock. Dealers are excited by this franchise and we see it out-earning several other major franchises now. Questions regarding the Genesis franchise are hurting relations between dealers and the OEMs. Consumers are excited about the products, but the supply to dealers is so low that few can justify the standalone facilities Hyundai is requesting. **Higher multiple range on average adjusted pre-tax profit: 3.75x-4.75x.**

Mazda

Mazda continues to be one of the top-performing franchises with an increase of 34.4% in the first nine months of 2021 compared to the same period last year. Mazda weathered the Pandemic well and continues to excite dealers with the momentum being built from planned new product launches and positive consumer perceptions. Dealers that have constructed new facilities are very pleased with the 12% margins they are earning, putting Mazda in a zone between midline and premium luxury brands. **Same multiple range on average adjusted pre-tax profit: 3.0x-4.0x.**

Nissan

Nissan announced a 23.1% increase in sales in the first nine months of 2021 compared to the same period in 2020. New and upcoming core products should allow Nissan dealers to try to recover further. Judy Wheeler and other Nissan execs have been visiting with dealers and mending fences. Nissan says it will put dealer profits and sustainable growth at the forefront of its strategy. The new strategy appears to be bearing fruit. Value seeking dealers are interested in acquiring this franchise again and we are pleased to see Nissan heading in the right direction. **Higher multiple range on average adjusted pre-tax profit: 3.25x-4.25x.**

ELECTRONICALLY FILED - 2023 May 17 4:25 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CASE NO. 2020-CP-40-01934
	)	
STIVERS BROTHERS AUTOMOTIVE, INC.,	)	
	)	**PLAINTIFF'S SUPPLEMENTAL RESPONSES TO DEFENDANTS' SECOND REQUEST TO ADMIT**
Plaintiff,	)	
	)	
v.	)	
	)	
W. WARNER PEACOCK and PEACOCK AUTMOTIVE, LLC,	)	
	)	
Defendants.	)	
	)	

TO: BRADFORD N. MARTIN, ESQ., ATTORNEY FOR DEFENDANTS

The Plaintiff, by and through its attorneys, hereby supplements its responses to Defendants' Second Request to Admit as follows:

1. Admit that the document attached hereto as Exhibit "1" is a true, correct, genuine, and authentic copy of the proposed Asset Purchase and Sale Agreement, dated July 23, 2020, by and between Stivers Brothers, as Seller, Peacock Automotive, as Buyer, and Warner, as Buyer Principal.

RESPONSE

Admit.

2. Admit that the proposed Asset Purchase and Sale Agreement attached hereto as Exhibit "2" was sent by counsel for Peacock Automotive and Warner to counsel for Stivers Brothers on July 23, 2020.

RESPONSE

Deny.

ELECTRONICALLY FILED - 2023 May 17 4:25 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

3. Admit that counsel for Stivers Brothers received the proposed Asset Purchase and Sale Agreement attached hereto as Exhibit "1" on July 23, 2020.

RESPONSE

Admit.

4. Admit that Stivers Brothers rejected and declined to execute the revised proposed Asset Purchase and Sale Agreement attached hereto as Exhibit "1".

RESPONSE

Admit.

5. Admit that the document attached hereto as Exhibit "2" is a true, correct, genuine, and authentic copy of the proposed Asset Purchase and Sale Agreement, dated October 26, 2020, by and between Stivers Brothers, as Seller, Peacock Automotive, as Buyer, and Warner, as Buyer Principal.

RESPONSE

Admit.

6. Admit that the proposed Asset Purchase and Sale Agreement attached hereto as Exhibit "2" was sent by counsel for Peacock Automotive and Warner to counsel for Stivers Brothers on October 26, 2020.

RESPONSE

Admit.

7. Admit that counsel for Stivers Brothers received the proposed Asset Purchase and Sale Agreement attached hereto as Exhibit "2" on October 26, 2020.

RESPONSE

Admit.

ELECTRONICALLY FILED - 2023 May 17 4:25 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

8. Admit that Stivers Brothers rejected and declined to execute the revised proposed Asset Purchase and Sale Agreement attached hereto as Exhibit "2".

RESPONSE

Admit.

9. Admit that Peacock Automotive agreed to assume the Lease from Stivers for the Hyundai/Genesis dealership, as defined in the proposed Assets Purchase Agreements.

RESPONSE

Admit.

STUDEMEYER LAW FIRM, P.C.

/s/ Ryan G. Studemeyer

J. Gregory Studemeyer
S.C. Bar # 5416
Ryan G. Studemeyer
S.C. Bar # 102578
7478 Carlisle Street
P.O. Box 1014
Irmo, S.C. 29063
(803) 393-4399

DOUGLAS JENNINGS LAW FIRM, LLC

/s/ J. Michael Baxley

J. Michael Baxley
S.C. Bar # 591
225 Seven Farms Drive, Suite 202
Charleston, SC 29492
(843) 408-0070

Attorneys for Plaintiff

Irmo, South Carolina

November 5, 2021

ELECTRONICALLY FILED – 2022 May 10 12:22 PM – RICHLAND – COMMON PLEAS – CASE#2020CP4001934

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	
	C/A NO. 2020-CP-40-01934
STIVERS BROTHERS AUTOMOTIVE, INC.,	**AFFIDAVIT OF J. GREGORY HUMPHRIES**
Plaintiff,	
v.	
W. WARNER PEACOCK and PEACOCK AUTOMOTIVE, LLC,	
Defendants.	

PERSONALLY APPEARED before me, the undersigned, who being duly sworn, deposes and states as follows:

1. I am over the age of 18 and competent to make this Affidavit.

2. Except for matters stated upon information and belief, I have personal knowledge of the facts contained in this Affidavit.

3. I am an attorney at law practicing in the area of corporate transactions in Orlando Florida. The firm of Shutts & Bowen, LLP has acted as a transactional counsel on behalf of Peacock Automotive, LLC regarding the purchase of the Hyundai dealership in Columbia from Stivers Brothers Automotive, Inc.

4. I have represented the Defendants for many years and was tasked with preparing contracts for the purchase and sale of two Columbia, South Carolina motor vehicles dealerships owned by the Stivers (Chevrolet and Hyundai/Genesis).

5. I communicated directly with Stivers' attorney Rick McBride, Jr., of Montgomery Alabama.

ELECTRONICALLY FILED – 2023 May 10 12:22 PM – RICHLAND – COMMON PLEAS – CASE #2020CP4001984

6. After the original APAs of January 7, 2020 were terminated by letter of March 27, 2020, I contacted Mr. McBride to discuss the purchase of the Hyundai/Genesis dealership.

7. I prepared a formal Letter of Intent ("LOI") and transmitted it to Mr. McBride on June 11, 2020 for the purchase of the Hyundai/Genesis dealership.

8. I received a counter proposal Asset Purchase Agreement from Mr. McBride on June 22, 2020.

9. I sent a signed APA to Mr. McBride on July 23 for the purchase of the Hyundai/Genesis dealership. (Exhibit A) The new APA provided that the payment would be all cash up front, that Purchaser would assume any extensions of the lease that Stivers had entered into, and would provide an additional payment of up to $200,000 for Seller's attorneys' fees and costs.

10. I once again sent an executed APA to Mr. McBride on behalf of my clients on October 26, 2020. (Exhibit B)

11. Both Agreements were executed would have been effective upon signing by the Seller.

12. Despite the fact that the price was the same as agreed to in January, and the terms were more favorable to Stivers, I never received a signed APA in response.

13. It is my belief that Stivers sold the Chevrolet dealership to another purchaser and that sale closed one or about October 7, 2020. (Exhibit C)

FURTHER AFFIANT SAYETH NOT.

J. Gregory Humphries

FILED ELECTRONICALLY FILED – 2023 May 10 12:22 PM – RICHLAND – COMMON PLEAS – CASE #2020CP4001984

SWORN TO before me this 4th

day of December, 2020.

Tracy Augustyni

Notary Public for Florida

My Commission Expires: _____

NOTARY PUBLIC STATE OF FLORIDA

TRACY AUGUSTYNI
Commission # GG 306524
Expires May 20, 2023
Bonded Thru Budget Notary Services

ELECTRONICALLY FILED – 2023 May 10 12:22 PM – RICHLAND – COMMON PLEAS – CASE#2020CP4001934

From: J. Gregory Humphries
Sent: Thursday, July 23, 2020 3:50 PM
To: Rick McBride Jr. (rick@mcbridelawllc.com)
Subject: Stivers/Peacock

ELECTRONICALLY FILED – 2023 May 10 12:22 PM – RICHLAND – COMMON PLEAS – CASE #2020CP4001934

Rick, In an effort to continue to seek resolution of our clients dispute, I am attaching a revised version of the contract to sell the Columbia Hyundai dealership, together with a signature page executed by Mr. Peacock. As you can see in the attached redline, we have made a few revisions that deal with the logistics of the process of obtaining approvals and closing on the acquisition. We have also eliminated the Chevy Transaction contingency which has perhaps resolved itself at this point as you are closer to consummating that transaction. If your clients would like to move forward pursuant to this contract, please advise prior to COB on Monday July 27. If we do not have an acceptance by that time, then the offer shall automatically be withdrawn.

Any questions, let me know. Thanks, Greg

Shutts

J. Gregory Humphries
Partner

Shutts & Bowen LLP
300 South Orange Avenue, Suite 1600 | Orlando, FL 32801
Direct: (407) 835-6940 | Fax: (407) 849-7240
E-Mail | Biography | V-Card | Website

ELECTRONICALLY FILED – 2022 May 10 12:22 PM – RICHLAND – COMMON PLEAS – CASE #2020CP4001934

Exhibit A to
Affidavit of J. Gregory Humphries

Asset Purchase and Sale Agreement dated July 23, 2020

To be filed pursuant to Motion to Seal dated December 4, 2020

ELECTRONICALLY FILED – 2023 May 10 12:22 PM – RICHLAND – COMMON PLEAS – CASE#2020CP4001934

From: J. Gregory Humphries <JHumphries@shutts.com>
Sent: Monday, October 26, 2020 1:14 PM
To: Rick McBride Jr. (rick@mcbridelawllc.com) <rick@mcbridelawllc.com>
Cc: John M. "Jay" Brennan <Jay.Brennan@gray-robinson.com>
Subject: Peacock Stivers - Hyundai

ELECTRONICALLY FILED – 2023 May 10 12:22 PM – RICHLAND – COMMON PLEAS – CASE#2020CP4001934

This message originated outside of GrayRobinson.

Rick, We understand that you have had a successful closing on the Chevrolet dealership in Columbia. In light of that matter being concluded, we would again like to advance our offer to purchase the Hyundai dealership. Attached is an APA executed by Mr. Peacock. We assume to attorney fee issue can now be quantified and will incorporate if you can provide the info. I have also attached a marked copy to the last document we sent to you. Any questions, let me know. Thanks, Greg

Shutts

J. Gregory Humphries
Partner

Shutts & Bowen LLP
300 South Orange Avenue, Suite 1600 | Orlando, FL 32801
Direct: (407) 835-6940 | Fax: (407) 849-7240
E-Mail | Biography | V-Card | Website

ELECTRONICALLY FILED – 2022 May 10 12:22 PM – RICHLAND – COMMON PLEAS – CASE #2020CP4001934

Exhibit B to
Affidavit of J. Gregory Humphries

Asset Purchase and Sale Agreement dated October 26, 2020

To be filed pursuant to Motion to Seal dated December 4, 2020

ELECTRONICALLY FILED – 2020 May 07 12:22 PM – RICHLAND – COMMON PLEAS – CASE#2020CP4001984

https://www.coladaily.com/business/jim-hudson-automotive-acquires-chevrolet-dealership-in-columbia/article_e22bcef8-0853-11eb-b698-4fb37b1abb91.html

FEATURED

Jim Hudson Automotive acquires Chevrolet dealership in Columbia

Karamie Hallman
Oct 7, 2020



Photo from jimhudsonchevy.com

Jim Hudson Automotive Group has just opened a Chevrolet Dealership in Columbia. The family-owned company purchased what was formerly Stiver's Chevrolet and officially opened its doors to customers under the new ownership Tuesday. The dealership is located at exit I-20 and Clemson Road in Columbia.

According to company officials, this is the automotive group's second dealership acquisition for the year after opening Jim Hudson Acura in August, located in Augusta.

The dealership is equipped to provide all Chevrolet Certified vehicle services, as well as offer the area a large selection of both new and certified pre-owned Chevrolet vehicles.

The Jim Hudson Automotive Group has been serving the Midlands since 1980, and has built its brand on a dedication to 100% customer satisfaction in every facet of its business, according to company representatives.

The Group represents nine of the industry's brands: Ford, Toyota, Lexus, Audi, Cadillac, Buick, GMC, Acura and now Chevrolet, as well as a vast selection of used and certified pre-owned vehicles of all makes and models.

More information about the new dealership can be found at jimhudsonchevy.com.

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TRAVELERS

One Tower Square, Hartford, Connecticut 06183

COINSURANCE CLAUSE

TRAVELERS CORP. TEL: 1-800-328-2189
AUTOMOBILE DEALERS
COMMON POLICY DECLARATIONS
ISSUE DATE: 01/13/20
POLICY NUMBER: Y-630-935K7856-IND-20

INSURING COMPANY:
THE TRAVELERS INDEMNITY COMPANY

1. NAMED INSURED AND MAILING ADDRESS:
STIVERS FORD LINCOLN, INC. (AS PER IL T8 00)
PO BOX 201280
MONTGOMERY, AL 36120

2. POLICY PERIOD: From 01/01/20 to 01/01/21 12:01 A.M. Standard Time at your mailing address.

3. LOCATIONS

Premises Loc. No.	Bldg. No.	Occupancy	Address
SEE IL T0 03			

4. COVERAGE PARTS FORMING PART OF THIS POLICY AND INSURING COMPANIES:

DELUXE PROPERTY COVERAGE PART DECLARATIONS	DX T0 00 11 12 IND
COMMERCIAL GENERAL LIABILITY COV PART DECLARATIONS	CG T0 01 11 03 IND
COMMERCIAL INLAND MARINE COV PART DECLARATIONS	CM T0 01 07 86 IND

5. NUMBERS OF FORMS AND ENDORSEMENTS FORMING A PART OF THIS POLICY: SEE IL T8 01 10 93

6. SUPPLEMENTAL POLICIES: Each of the following is a separate policy containing its complete provisions:

Policy	Policy No.	Insuring Company

DIRECT BILL

7. PREMIUM SUMMARY:

Provisional Premium	$ 108,459
Due at Inception	$
Due at Each	$

NAME AND ADDRESS OF AGENT OR BROKER:
STARKE AGENCY INC (HE805)
P O BOX 4359
MONTGOMERY, AL 361034359

COUNTERSIGNED BY:

_____
Authorized Representative

DATE: _____

IL T0 02 11 89(REV. 09-07) PAGE 1 OF 1
OFFICE: BIRMINGHAM

ELECTRONICALLY FILED - 2023 May 17 4:25 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

LOCATION SCHEDULE **POLICY NUMBER:** Y-630-935K7856-IND-20

This Schedule of Locations and Buildings applies to the Common Policy Declarations for the period 01-01-20 to 01-01-21.

Loc. No.	Bldg. No.	Address	Occupancy
1	1	4000 EASTERN BLVD MONTGOMERY, AL 36116	FORD LINCOLN DEALERSHIP
1	2	4000 EASTERN BLVD MONTGOMERY, AL 36116	FORD LINCOLN DEALERSHIP
1	3	4060 EASTERN BLVD. MONTGOMERY, AL 36116	WAREHOUSE
2	4	1950 ORION DRIVE DECATUR, GA 30033	SUBARU DEALERSHIP
3	5	1034 SOUTH BRENTWOOD BLVD #1630 ST LOUIS, MO 63117	OFFICE
4	6	6001 TWO NOTCH ROAD COLUMBIA, SC 29223	LRO
5	7	3621 MCGEHEE RD MONTGOMERY, AL 36111	MIGHTY PARTS DISTRIBUTOR
6	8	111 NEWLAND RD. COLUMBIA, SC 29229	DEALERSHIP
7	9	101 NEWLAND RD. COLUMBIA, SC 29229	DEALERSHIP
8	10	7901 VAUGHN ROAD MONTGOMERY, AL 36116	QUICK OIL CHANGE SERVICE CENTER
9	11	3972-3980 EASTERN BLVD MONTGOMERY, AL 36116	STORAGE LOT
10	12	3960 EASTERN BLVD MONTGOMERY, AL 36116	STORAGE LOT
11	13	2209 COBBS FORD RD PRATTVILLE, AL 36066	DEALERSHIP

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LOCATION SCHEDULE **POLICY NUMBER:** Y-630-935K7856-IND-20

This Schedule of Locations and Buildings applies to the Common Policy Declarations for the period 01-01-20 to 01-01-21 .

Loc. No.	Bldg. No.	Address	Occupancy
11	14	2209 COBBS FORD RD BLDG 2 PRATTVILLE, AL 36066	DEALERSHIP

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SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT (this "**Sublease**") is entered into as of October 5, 2020 2020, by and between **KEH Real Estate, LLC**, a South Carolina limited liability company ("**Sublandlord**"), and **STIVERS REALTY L.C.**, a Missouri limited liability company ("**Subtenant**").

RECITALS:

A. Sublandlord, as tenant, is a party to a certain Lease Agreement dated December 23, 2003, as amended by that certain Amendment to Lease Agreement and Reaffirmation of Guaranty dated June 25, 2004 and by that certain Second Amendment to Lease Agreement and Reaffirmation of Guaranty dated March 20, 2009, as amended by that certain Third Amendment to Lease Agreement dated May 30, 2019 and as further amended by that certain Fourth Amendment to Lease Agreement and Reaffirmation of Guaranty dated June 4, 2020 as assigned to and assumed by Sublandlord (collectively, the "**Master Lease**"), with CARS-DB4, L.P., a Delaware limited partnership ("**Master Landlord**"), as landlord, for the rental of the premises and improvements located at 101 and 111 Newland Road, Columbia, South Carolina, as more particularly described on Exhibit A to the Master Lease (the "**Subleased Premises**"). The Master Lease is attached hereto as Exhibit A and incorporated herein by this reference.

B. Sublandlord now desires to sublease the Subleased Premises to Subtenant, and Subtenant desires to sublease the Subleased Premises from Sublandlord, subject to the terms and conditions of this Sublease.

C. Contemporaneously with the execution and delivery of this Sublease, Subtenant is delivering to Landlord a $1,000,000 Letter of Credit as security for the performance of Subtenant hereunder.

D. The effectiveness of this Sublease is subject to the prior written consent of Master Landlord.

NOW, THEREFORE, in consideration of the foregoing premises, it is hereby agreed by and between the parties hereto, intending to be legally bound, as follows:

1. **Subleased Premises**. Sublandlord hereby subleases to Subtenant, and Subtenant hereby subleases from Sublandlord, for the Term (as defined in **Paragraph 2** below), at the rental, and upon all of the conditions set forth herein, the Subleased Premises.

2. **Term**. The term of this Sublease (the "**Term**") shall commence on the date hereof (the "**Commencement Date**"), and shall terminate at 11:59 p.m., Eastern Standard Time, on [24 months], unless sooner terminated pursuant to any provision hereof. Subtenant acknowledges and agrees that only Sublandlord shall have the right to exercise any renewal options or other rights or options granted to Sublandlord by Master Landlord under the Master Lease, including the right to give notice of termination, as described in Paragraph 3(b) of the Master Lease. Subject to Paragraph 6 hereof, Sublandlord agrees that Subtenant shall have the right of quiet possession and enjoyment of the Subleased Premises for the operation of its automobile dealership business throughout the Term, provided the Subtenant complies with and discharges all of its obligations hereunder.

3. **Rent**.

(a) Subtenant shall pay as monthly base rent hereunder an amount equal to Forty Thousand and No/100 Dollars ($40,000.00) per month ("**Rent**"). As used in this Sublease, "**Rent**" shall

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include the Rent described above as well as any additional rent or other sums payable hereunder, including without limitation all sales taxes relating to the Premises.

(b) Subtenant shall pay Rent, with respect to each calendar month of the Term, on the 1st day of each calendar month without notice or demand, and without any deduction, abatement or setoff, except as otherwise provided herein. The Rent for any partial month shall be paid in advance and prorated on a daily basis for the number of days in such month during which the Term is in effect. The first (1st) payment of Rent shall be due and payable on or before the Commencement Date and shall be a prorated rental payment for any part of such month beginning on the Commencement Date and ending on the last day of the month in which the Commencement Date occurs.

(c) Upon the Commencement Date and throughout the Term, Subtenant shall assume all obligations of Sublandlord as "Tenant" under the Master Lease with respect to the Subleased Premises and shall pay all costs of operating and maintaining the Subleased Premises (excluding payments of Monthly Base Rent due from Sublandlord to Master Landlord, which shall remain the responsibility of Sublandlord), including payments of taxes, assessments and other governmental impositions (as described in Paragraph 15 of the Master Lease), costs of utilities and other services (as described in Paragraph 11 of the Master Lease) and the all costs of necessary maintenance and repairs to the Subleased Premises (including, but not limited to those as described in Paragraph 7 of the Master Lease).

(d) If Subtenant fails to make any payment of Rent or any other sums or amounts to be paid by Subtenant hereunder on or before the date such payment is due and payable and such amount remains unpaid for a period of five (5) days thereafter, or such longer time as required by law of the State of South Carolina, Subtenant shall pay to Sublandlord an administrative late charge of five percent (5%) of the amount of such payment or such lesser amount then allowable under the laws of the State of South Carolina. Such late charge shall constitute additional rent and shall be due and payable with the next installment of Rent due hereunder.

(e) Should Sublandlord fail to pay rent to Master Landlord, Subtenant shall have the right, in addition to any other right or remedy available to Subtenant, to pay such rent directly to Master Landlord, and the cost of performance shall be offset against the rental amount payable to Sublandlord by Subtenant or, at Subtenant's option, Sublandlord shall reimburse Subtenant the amount of such payment and such reimbursement amount shall bear interest at the lesser of ten percent (10%) or the maximum interest rate then allowable under the laws of the State of South Carolina until payment.

(f) If Subtenant shall remain in possession of the Subleased Premises or any part thereof following the expiration of the Term or earlier termination of this Sublease without an agreement in writing between Sublandlord and Subtenant with respect thereto, the person or party remaining in possession shall be deemed to be a subtenant from month to month, and during any such holdover, the Rent payable under this Sublease by such subtenant from month to month shall be equal to the greater of (i) one hundred fifty percent (150%) of the rate or rates in effect immediately prior to the expiration of the Term or earlier termination of this Sublease, and (ii) the total amount of all rent payable by Sublandlord under the Master Lease and owing to such holdover period by Subtenant, including any penalty rent payable to Master Landlord therefor. Such subtenant from month to month shall be subject to all other conditions, provisions and obligations of this Sublease. In no event, however, shall such holding over be deemed or construed to be or constitute any renewal or extension of this Sublease.

4. **Condition of Premises.** Subtenant hereby accepts the Subleased Premises in their condition existing as of the Commencement Date, "AS-IS" and accepts the Subleased Premises and this Sublease subject to all applicable zoning, municipal, county and state laws, ordinances, and regulations governing and regulating the use of the Subleased Premises and subject to the obligations of Landlord and

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Sublandlord under the Master Lease and this Sublease. Subtenant further accepts the Subleased Premises and this Sublease subject to: (a) all matters disclosed on the applicable public registry, (b) all matters that would be revealed by an accurate and current survey of the Subleased Premises, and (c) all other liens, easements, encumbrances and restrictions affecting the Subleased Premises.

5. **Master Lease**.

(a) Subtenant agrees that this Sublease shall be specifically subject and subordinate to the terms, conditions, covenants, obligations, representations and warranties stated in the Master Lease.

(b) Subtenant shall not do or cause to be done or fail to do or suffer or permit any act to be done which would cause the Master Lease or the rights of Sublandlord as "Tenant" under the Master Lease to be endangered, canceled, terminated, forfeited or surrendered, or which would cause Sublandlord to be in default thereunder or liable for any damage, claim or penalty.

(c) Sublandlord shall be entitled to, and may exercise, any and all rights and remedies of Master Landlord arising under or in connection with the Master Lease as well as any and all rights and remedies granted to Sublandlord arising under or in connection with this Sublease. In furtherance of, but not by way of limitation of the generality of, the foregoing sentence: (i) whenever any matter under the Master Lease requires or calls for Sublandlord as the "Tenant," to obtain any consent, approval or waiver from, or from notice to, Master Landlord, Subtenant shall be obligated to obtain an identical consent, approval or waiver from, or to give any notice to, Sublandlord; and (ii) Subtenant shall indemnify Sublandlord and its Affiliates (as defined in Exhibit E to the Master Lease), their respective successors, assigns, officers, directors, shareholders, managers, members, employees, trustees, agents and other representatives, to the same extent and on the same terms and conditions as Sublandlord, as the "Tenant," indemnifies the Master Landlord under the Master Lease, pursuant to Paragraphs 10(c)(viii), 18(c), 23, 25, and 37 of the Master Lease with respect to the Subleased Premises. Notwithstanding clause (ii) in the foregoing sentence, Subtenant's indemnity obligations under the Master Lease shall only apply to Liabilities (as that term is defined in Paragraph 18(c) of the Master Lease) and other matters first arising on or after the Commencement Date.

(d) Sublandlord shall maintain the Master Lease in full force and effect during the Term, promptly provide Subtenant copies of all material correspondence to and from Master Landlord regarding the Master Lease that are applicable to the Subleased Premises and shall indemnify, defend and hold Subtenant and its affiliates from and against all costs, fees (including, without limitations, reasonable attorney's fees) expenses, liabilities and claims incurred or suffered by Subtenant arising from any breach, violation or default of Sublandlord under the Master Lease, unless such breach, violation or default is the result of the action or inaction of Subtenant or Subtenant's officers, directors, shareholders, managers, members, employees, trustees, agents and other representatives.

(e) Subtenant shall maintain its own independent commercial, general liability insurance policy on the Subleased Premises, worker's compensation and employer's liability insurance, builder's risk insurance and rent loss insurance, during the Term upon terms and in amounts not less than that required of Sublandlord by the Master Lease, which policies shall name Sublandlord and Master Landlord as additional insureds and shall otherwise comply with the insurance provisions (both as to scope and coverage amounts) of the Master Lease. Subtenant shall also maintain fire and casualty and earthquake insurance covering the building and other improvements located on the Subleased Premises as required under the Master Lease, which policies shall name Sublandlord and

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Master Landlord as loss payees and shall otherwise comply with the insurance provisions (both as to scope and coverage amounts) of the Master Lease. Subtenant shall also maintain appropriate levels of personal property insurance sufficient to protect Subtenant's personal property in the event of a casualty. Prior to the Commencement Date, and thereafter upon the request of Sublandlord, Subtenant shall deliver to Sublandlord one or more certificates of insurance evidencing compliance with this **Paragraph 5(e)**. If Master Landlord requires Sublandlord to maintain any insurance as required under the Master Lease or if Sublandlord maintains any insurance as required under the Master Lease, then Subtenant shall not be required to maintain such insurance and shall (subject to proration) reimburse Sublandlord for all such premiums within thirty (30) days of receipt of an invoice therefor.

(f) Upon the expiration of the Term, or upon the sooner termination of this Sublease, Subtenant shall peaceably and quietly surrender the Subleased Premises to Sublandlord free and clear of all liens and in good repair and condition, reasonable wear and tear excepted.

6. **Entry by Master Landlord or Sublandlord into the Subleased Premises**. Master Landlord and Sublandlord shall have the right to enter into the Subleased Premises as provided in Paragraph 13 of the Master Lease as incorporated herein.

7. **Subtenant's Events of Default; Remedies.**

(a) Each of the following shall constitute an event of default by Subtenant (a "**Event of Default**") under this Sublease:

(i) Subtenant's failure to pay when due any regularly scheduled payment of Rent, or any other sum of money payable hereunder (whether as additional rent or otherwise), which failure is not cured within five (5) days after receipt of written notice thereof from Sublandlord;

(ii) Subtenant's failure to provide insurance coverage (or Subtenant's allowing such coverage to be canceled or lapse) pursuant to its obligations hereunder;

(iii) Subtenant's failure to perform any of the other terms, covenants or conditions contained in this Sublease, if not remedied within twenty (20) days after receipt of written notice thereof;

(iv) if Subtenant becomes bankrupt or insolvent, or files any debtor proceedings, or files pursuant to any statute a petition in bankruptcy or insolvency or for reorganization, or files a petition for the appointment of a receiver or trustee for all or substantially all of its assets, and such petition or appointment shall not have been set aside within sixty (60) days from the date of such petition or appointment, or if any of the foregoing are filed against Subtenant, or if Subtenant makes an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due, or if Subtenant's interest in this Sublease is attached, seized or made subject to any other judicial seizure and such seizure or attachment is not discharged within sixty (60) days;

(v) if Subtenant is liquidated or dissolved, or begins proceedings toward such liquidation or dissolution, or, in any manner, permits the sale or divestiture of substantially all of its assets;

(vi) if any part of the Subleased Premises is voluntarily or involuntarily transferred, assigned, conveyed, levied upon or attached in any proceeding, unless Subtenant is contesting such lien or attachment in good faith.

EX. K

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(b) At any time after the occurrence and during the continuance of an Event of Default, with or without additional notice or demand and without limiting Sublandlord's rights or remedies as a result of such Event of Default, Sublandlord may do any or all of the following:

(i) Terminate Subtenant's right to possession of the Subleased Premises by any lawful means, in which case this Sublease shall terminate and Subtenant shall immediately surrender possession of the Subleased Premises to Sublandlord. In such event, Sublandlord shall be entitled to recover from Subtenant all damages incurred by Sublandlord by reason of Event of Default including but not limited to the cost of recovering possession of the Subleased Premises, expenses of reletting, but not including necessary renovation and alteration of the Subleased Premises, reasonable attorneys' fees, and unpaid Rent up to the time of termination;

(ii) Maintain Subtenant's right to possession, in which case this Sublease shall continue in effect whether or not Subtenant shall have abandoned the Subleased Premises. In such event, Sublandlord shall be entitled to enforce all of its rights and remedies under this Sublease, including the right to recover Rent or any other sum as it becomes due; and/or

(iii) Pursue any other remedy available to Sublandlord under the laws of the State of South Carolina.

8. **Notices**. All notices, claims, certificates, requests, demands and other communications hereunder shall be given in writing and shall be delivered personally or sent by facsimile or email or by a nationally recognized overnight courier, postage prepaid, and shall be deemed to have been duly given when so delivered personally or by email or by confirmed facsimile or the next delivery day after the date of deposit with such nationally recognized overnight courier. All such notices, claims, certificates, requests, demands and other communications shall be addressed to the respective parties at the addresses set forth below or to such other address as the person to whom notice is to be given may have furnished to the others in writing in accordance herewith.

KEH Real Estate, LLC 720 Gracern Road, Suite 101 Columbia, South Carolina 29210 Attn: Karyn L. Heimes	Stivers Realty, L.C. 4000 Eastern Boulevard Montgomery, Alabama 36116 Attn: Edward M. Stivers, III
with a copy to:	with a copy to:
Rogers Lewis Jackson Mann & Quinn, LLC 1901 Main Street, Suite 1200 Columbia, South Carolina 29201 Attn: Michael H. Quinn, Jr., Esq.	McBride Law, LLC 1784 Taliaferro Trail, Suite B Montgomery, Alabama 36117 Attn: Richard L. McBride, Jr. Esq. Rushton, Stakely, Johnston & Garrett, P.A. 184 Commerce Street Montgomery, Alabama 36104 Attn: William I. Eskridge, Esq.

9. **Assignment; Subletting**. Subject to the terms of the Master Lease, Subtenant may, without the prior written consent of Sublandlord, (a) assign or transfer its rights or obligations under this Sublease so long as the assignee assumes all Subtenant's obligations hereunder, or (b) sublet all or part of

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the Subleased Premises. An assignment hereunder shall release Subtenant from all obligation and liabilities hereunder.

10. **Casualty**. If during the Term the Subleased Premises is either partially damaged or wholly destroyed by fire or other casualty, to the extent insurance proceeds are available to Sublandlord for such purpose, but only to such extent, Sublandlord shall restore the same with reasonable diligence. If the Subleased Premises, or any portion thereof, as a result of such fire or other casualty is rendered unfit or is otherwise made unsuitable for use or occupancy by Subtenant, the Rent otherwise required to be paid by the Subtenant under the terms of this Sublease shall be abated in whole or in part on an equitable basis until such time as the Subleased Premises has been repaired and/or restored and possession thereof has been delivered to the Subtenant. Except for damage, loss or injury resulting from Sublandlord's negligent or intentional acts or omissions, Subtenant agrees that: (a) all property owned by it in, on or about the Subleased Premises, shall be at the sole risk and hazard of the Subtenant and (b) Sublandlord shall not be liable or responsible for any loss of or damage to Subtenant or Subtenant's property resulting or arising from the use and occupancy of the Subleased Premises. Sublandlord and Subtenant shall have the right to terminate this Sublease on thirty (30) days written notice to the other given within one hundred eighty (180) days after the Subleased Premises is damaged or destroyed as a result of an occurrence with respect to which sufficient insurance proceeds are not available to Sublandlord to complete the repair and/or renovation of the Premises.

11. **Condemnation**. If all or any part of the Subleased Premises are condemned under the power of eminent domain or sold by the Master Landlord under the threat of condemnation, this Sublease shall, at the option of Subtenant, terminate and expire as of the date of such taking or sale and from and after such date both Sublandlord and Subtenant shall be released from any further liability hereunder. In the event this Sublease is not terminated, Rent shall be equitably adjusted. If this Sublease is terminated as a result of a condemnation under the power of eminent domain or sale by the Master Landlord under the threat of condemnation, all Rent under this Sublease shall be prorated to the earlier of (i) the date of taking, or (ii) the date Subtenant is forced to vacate the Subleased Premises. In any condemnation under the power of eminent domain or sale under threat of condemnation, Master Landlord's mortgagee for the Subleased Premises shall be entitled to receive all proceeds of condemnation until such time as mortgagee's loan relating to the Subleased Premises has been paid in full. Thereafter, the Master Landlord shall be entitled to all other proceeds except that Subtenant shall be entitled to make its own separate claim for the loss of any Subtenant improvements that are taken and for its moving and relocation expenses.

12. **Brokers**. Sublandlord and Subtenant represent and warrant to each other that neither has had any dealings, negotiations or consultations with relating to the Subleased Premises or this transaction with any broker or finder and that no other broker or finder called the Subleased Premises to Subtenant's attention for lease or took any part in any dealings, negotiations or consultations relating to the Subleased Premises or this Sublease on Subtenant's or Sublandlord's behalf. Subtenant agrees to be responsible for, indemnify, defend and hold harmless Sublandlord from and against all costs, fees (including, without limitation, reasonable attorney's fees), expenses, liabilities and claims incurred or suffered by Sublandlord arising from any breach by Subtenant of Subtenant's foregoing representation and warranty. Sublandlord agrees to be responsible for, indemnify, defend and hold harmless Subtenant from and against all costs, fees (including, without limitation, reasonable attorney's fees), expenses, liabilities and claims incurred or suffered by Subtenant arising from any breach by Sublandlord of Sublandlord's foregoing representation and warranty.

13. **Letter of Credit**. The Subtenant shall deposit a $1,000,000 letter of credit from ServisFirst Bank as security for Subtenant's performance under this Sublease. Provided no Event of Default has occurred and is continuing, the letter of credit shall be returned to Subtenant within five (5)

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days of the expiration of the Term or an assignment of this Sublease. The letter of credit shall contain, among other terms, provisions that (i) require Sublandlord to provide written notice to Subtenant of an Event of Default and sixty (60) days opportunity to cure before any draw on the letter of credit; (ii) require Sublandlord to certify that Subtenant has defaulted under this Sublease and Subtenant has not timely cured such Event of Deault; and (iii) shall be renewable annually during the Term. Any draw under the letter of credit shall be limited to the amount reasonably necessary to cure or partially cure an Event of Default under this Sublease.

14. **Improvements and Alterations**. Subtenant shall not make any alterations to the Subleased Premises without the prior written approval of Landlord and, which approval shall be in Landlord's and Sublandlord's sole discretion.

Except as provided in paragraph 15 hereof, any improvements, alterations, replacements or additions made by the Subtenant pursuant to Landlord's and Sublandlord's consent as hereinabove provided, shall be considered a part of the Subleased Premises.

15. **Fixtures and Personal Property**. Subtenant shall furnish, at Subtenant's own expense, all trade fixtures and equipment, together with all interior furnishing, which Subtenant desires to have in the Subleased Premises. Provided Subtenant is not in default under the terms of this Sublease, Subtenant shall have the right, at the termination of this Sublease, to remove any and all trade fixtures, equipment and other personal property which it may have stored or installed in the Subleased Premises, provided such removal is completed on or before the expiration of the Sublease term and is permitted under the Master Lease. The rights herein shall not include the right to remove any plumbing, wiring, wall, or floor coverings glued or fastened to the walls or floors. If Subtenant shall fail to remove its trade fixtures or other property within the period herein specified, such fixtures and other property not removed by Subtenant shall be deemed abandoned by Subtenant and become, at Sublandlord's option, the property of Sublandlord.

16. **Liens**. All persons are put upon notice of the fact that Subtenant does not, and will never under any circumstances, have the power to subject the interest of Sublandlord in the Subleased Premises to any mechanic's or materialmen's liens or lien of any kind. Subtenant further agrees, upon request of Sublandlord to furnish Sublandlord with a list of all persons or entities furnishing labor or material to said Subleased Premises so that Sublandlord, at its option, may advise such persons or entities of the aforesaid provisions.

Subtenant covenants and agrees with Sublandlord that Subtenant will not permit or suffer to be filed or claimed against the interest of Sublandlord in the Subleased Premises during the continuance of this Sublease any lien or claim of any kind, and if such lien be claimed or filed, it shall be the duty of Subtenant, within thirty (30) days after written notice from Sublandlord, to cause the Subleased Premises to be released from such claim, or lien, either by payment, or by the posting of bond, or by the payment into the Court of the amount necessary to relieve and release the Subleased Premises from such claim. Any lien placed by Subtenant on the Subleased Premises shall be subject to and subordinate to Sublandlord's interest in the Subleased Premises.

17. **Property at Risk of Subtenant**. All property of every kind which may be on the said Subleased Premises during the term hereof shall be at the sole risk of the Subtenant or those claiming under it, and the Sublandlord shall not be liable to the Subtenant or any other person whatsoever for any injury, loss or damages to any person or property, in or upon the Subleased Premises. Subtenant agrees to indemnify and hold harmless the Sublandlord from and against any and all injuries to persons

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and damage to property, or claims of injuries to persons and damage to property arising out of the use and occupancy of the said Subleased Premises by Subtenant, its agents, employees, assigns, subtenants, invitees or customers.

18. **Sale or Transfer of Sublandlord's Interest**. In the event of the sale, assignment or transfer by Sublandlord of Sublandlord's interest in the Subleased Premises, Sublandlord shall thereupon be released and discharged from all covenants and obligations of the Sublandlord except such liabilities and obligations of the Sublandlord as shall have accrued prior to any such sale, assignment or transfer, and Subtenant agrees to look solely to such successor in interest of the Sublandlord for performance of such obligations. All covenants and obligations of the Sublandlord shall be binding upon each new owner or successor for the time being of the Subleased Premises. Sublandlord's assignment of the Sublease or of any or all of Sublandlord's rights herein shall in no manner affect Subtenant's obligations hereunder. Subtenant shall thereafter look to such assignee, as Sublandlord, provided Subtenant has first received written notice of such assignment of Sublandlord's interest.

19. **Waiver**. One or more waivers of any breach of any covenant, term or condition of this Sublease by either party shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval by either party to, or of any act by, the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

20. **No Partnership Nor Joint Venture**. Under no circumstances shall Sublandlord be deemed or held to be a partner or joint venturer with Subtenant in the conduct of Subtenant's business.

21. **Captions**. The captions used in this Sublease are for convenience only and do not in any way limit or amplify the terms and provisions hereof.

22. **Estoppel Certificate**. Within ten (10) days after request thereof by Landlord, Sublandlord, or any mortgagee under a mortgage covering the Subleased Premises, or if, upon any contract of sale, sale, assignment or other transfer of the Subleased Premises by Landlord or Sublandlord an estoppel certificate shall be requested of Subtenant, Subtenant shall execute and deliver in recordable form acceptable to Subtenant a statement to any proposed mortgagee or other transferee, or to Landlord or Sublandlord, certifying any facts that are then true with respect to this Sublease, including without limitation, if true, that this Sublease is in full force and effect, that Subtenant has accepted and is presently occupying said Subleased Premises, that Subtenant has commenced the payment of rent, that said payments are current, that no default exists under the terms and provisions of said Sublease, and that there are no defenses or offsets to the Sublease claimed by Subtenant.

23. **Benefit**. This Sublease and all of the covenants and conditions hereof shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns.

24. **Legal Proceedings**. This Sublease shall be governed by the laws of the State of South Carolina and all judicial proceedings shall be prosecuted in the courts of the county where the Subleased Premises are located and the parties consent to the jurisdiction and venue of such courts. THE PARTIES VOLUNTARILY AND MUTUALLY WAIVE TRIAL BY JURY IN ALL JUDICIAL PROCEEDINGS RELATED TO THIS SUBLEASE.

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25. **Counterparts and Email and Facsimile Signatures**. This Sublease may be executed in any number of identical counterparts, which together shall be deemed a single agreement. For purposes of determining the enforceability of this Sublease, e-mail and facsimile signatures shall be binding as originals. Delivery of this executed Sublease may be accomplished through electronic delivery (including email) between the parties or their agents.

26. **Entire Agreement**. This Sublease represents the entire agreement between Sublandlord and Subtenant with respect to the Subleased Premises and other subject matter contemplated herein and there are no collateral or oral agreements or understandings between the parties with respect to the Subleased Premises. No rights, easements or licenses are acquired in the Subleased Premises by Subtenant by implication or otherwise except as expressly set forth in this Sublease. This Sublease shall not be modified in any manner except by an instrument in writing executed by the parties. Both parties having participated fully and equally in the negotiation and preparation of this Sublease, this Sublease shall not be more strictly construed, nor any ambiguities in this Sublease resolved, against either Sublandlord or Subtenant.

[Signatures Appear on the Following Page]

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IN WITNESS WHEREOF, this Sublease has been duly executed under seal as of the day and year first above written.

SUBLANDLORD:

KEH Real Estate, LLC, a South Carolina limited liability company

By: _____
Keith E. Hudson
Its: President

SUBTENANT:

STIVERS REALTY, L.C.,
a Missouri limited liability company

By: _____

Name: Edward H. Stivers III

Title: Member

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Horger, Barnwell & McCurry, LLP
PO Drawer 329
Orangeburg, SC 29116-0329

Space above this line for recording information

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS THAT, **RDS ASSOCIATES, LLC**, a South Carolina limited liability company, herein referred to as Grantor for and in consideration of the sum of Five and No/00 ($5.00) Dollars and other valuable consideration to it paid by **STIVERS REALTY, L.C.**, a Missouri limited liability company, hereinafter referred as Grantee in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release, subject to the permitted exceptions ("Permitted Exceptions") set forth below, unto the said Grantee, its successors and assigns forever, the following described property ("Property"):

SEE EXHIBIT "A" ATTACHED HERETO

GRANTEE'S ADDRESS: Stivers Realty, L.C., 4000 Eastern Blvd., Montgomery, AL 36116

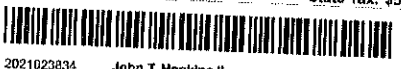
THIS CONVEYANCE is made subject to the Permitted Exceptions set forth on Exhibit "B" attached hereto.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said Property belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the Property before mentioned unto the said Grantee, its successors and assigns.

AND THE GRANTOR does hereby bind Grantor, and the Grantor's successors and assigns, to warrant and forever defend all and singular the said Property, subject to the above Permitted Exceptions, unto the said Grantee, its successors and assigns, against Grantor and Grantor's successors and assigns, and against every person whomsoever lawfully claiming or to claim the same, by or through the Grantor, but not otherwise.

Book 2608-2234
2021023834 04/22/2021 10:29:41:340 Deed
Fee: $15.00 County Tax: $2255.00 State Tax: $5330.00



2021023834 John T. Hopkins II Richland County R.O.D.

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WITNESS my Hand and Seal this 15th day of April, 2021.

Signed, Sealed and Delivered
in the Presence of:

Witness

Witness

RDS ASSOCIATES, LLC, a South Carolina limited liability company

By:
Name: Brian K. Smith
Its: Manager

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

ACKNOWLEDGMENT

I, a Notary Public for South Carolina, do hereby certify that RDS ASSOCIATES, LLC, by Brian K. Smith, its Manager, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 15th day of April, 2021.

Notary Public for South Carolina
My Commission Expires: 9/5/23

DAVID G. WOLFF
NOTARY
PUBLIC
SOUTH CAROLINA

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EXHIBIT "A"

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being at the Northeastern corner of the intersection of Clemson Road and Farrow Road, in the County of Richland, State of South Carolina, North of the City of Columbia being shown and designated as Parcel 5A, 7.299 acres upon plat prepared for Commodore Properties and Manning/Johnson Family Limited Liability Partnership by United Design Services, Inc. dated November 7, 2003, last revised November 13, 2003 and recorded in the Office of the Register of Deeds for Richland County in Record Book 898 at Page 1483.

TMS: 17400-04-04

DERIVATION: This being a portion of the property conveyed to RDS Associates, a limited liability company, by deed of Commodore Properties, a South Carolina general partnership dated January 30, 2004, recorded January 30, 2004 in Book 898 at Page 1484. RDS Associates, a limited liability company, changed its name to RDS Associates, LLC as set forth in the Amended Articles of Organization filed with the South Carolina Secretary of State on March 7, 2016, a copy of which is recorded in the Office of the Register of Deeds for Richland County in Book R2094 at Page 910.

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EXHIBIT "B"

Permitted Exceptions

1. Taxes and assessments for the year 2021, and subsequent years, which are a lien but are not yet due and payable.

2. Restrictions filed for record in Book 2282, Page 443, Public Records, but omitting any covenants or restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial stratus, marital status, disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document.

3. That certain easement to South Carolina Electric & Gas Co.recorded in the office of the Register of Deeds 1861, at Page 3699, revised 06/25/2011 and recorded in Book R1861, at Page 3706 as shown on that plat prepared for Stivers Realty, LLC by Cox and Dinkins dated October 9, 2019.

4. Easement as shown on plat as unknown width has been determined by Dominion Energy South Carolina, Inc. to be 15' on either side of the centerline of the pole line, on that certain plat prepared for Stivers Realty, LLC by Cox and Dinkins dated October 9, 2019

EX. L

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is 7.299 acres, located at the intersection of Clemon Road and Farrow Road, bearing Richland County TMS No. 17400-04-04 and was transferred by RDS ASSOCIATES, LLC, a South Carolina limited liability company, to STIVERS REALTY, L.C., a Missouri limited liability company by deed dated April 15, 2021.

3. Check one of the following: The deed is:

(a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) _____ exempt from the deed recording fee because (See Information section of affidavit): _____

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty?
Check Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

(a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $2,050,000.00.

(b) ____ The fee is computed on the fair market value of the realty which is $

(c) ____ The fee is computed on the fair market value of the realty as established for property tax purposes which is $

5. Check Yes ____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. (This includes, pursuant to Code Section 12-59-140(E)(6), any lien or encumbrance on realty in possession of a forfeited land commission which may subsequently be waived or reduced after the transfer under a signed contract or agreement between the lien holder and the buyer existing before the transfer.) If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here: $2,050,000.00.

(b) Place the amount listed in item 5 above here: $0.00 (If no amount is listed, place zero here.)

(c) Subtract Line 6(b) from Line 6(a) and place result here: $2,050,000.00.

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: $7,585.00.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to and subscribed before me this 15th day of April, 2021.

Notary Public for State of South Carolina

Notary Signature: _____

Notary (printed name): David G. Wolff

My Commission Expires: 9/5/23

RDS ASSOCIATES, LLC, a South Carolina limited liability company

By: _____

Name: Brian K. Smith

Its: Manager

DAVID G. WOLFF
NOTARY
PUBLIC
SOUTH CAROLINA

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HYUNDAI

HYUNDAI MOTOR COMPANY

2021 FINANCIAL STATEMENT | DEALER NO. SC045 | DEALER NAME STIVERS HYUNDAI | COVERING PERIOD FROM January 1, 2021 THRU January 31, 2022 | PAGE 1

ASSETS			ACCT	AMOUNT OMIT CENTS	LINE	LIABILITIES	ACCT	AMOUNT OMIT CENTS
CURRENT ASSETS						CURRENT LIABILITIES		
Petty Cash			200	250	1	ACCOUNTS PAYABLE - Trade Creditors	300	298,797
Cash In Bank			202	2,233,206	2	Service, P & A, Body Shop Credit Balances	220	-
Cash On Hand			203	(4,011)	3	Licence & Registration Fees	301	48,216
Contracts in Transit			205	1,186,263	4	Customer Deposits CONTRACT UNITS -	222	-
Securities, Money Market & CD's			260	-	5	Vehicle Protection & Warranties Payable	303	-
TOTAL CASH AND CONTRACTS (LINES 1 TO 5)				3,415,708	6	Vehicle Lien Payable	309	134,945
RECEIVABLES					7	NOTES PAYABLE		
Customer Notes	PAST DUE	-	210	-	8	New Vehicles & Demonstrators - Hyundai	310	1,670,978
Customer Accts, Service, P&A, BS	PAST DUE	-	220	325,766	9	Used Vehicles - Hyundai	311	-
Accounts Receivable - Retail Vehicles			222	17,471	10	Used Vehicles - Other	312	99,899
Lease & Rental Accounts			223	-	11	Lease & Rental Units	313A	-
Wholesale & Dealer Trade			224	1,032,395	12	Other	314	-
Service Contract Receivables			225	-	13	Current Portion - Long Term Debt	315	-
Transportation Claims			229A	-	14	TOTAL ACCOUNTS & NOTES PAYABLE (LINES 1 TO 13)		2,252,835
Trade Receivables Affiliates			261	-	15	ACCRUED LIABILITES		
Finance & Insurance Receivables			264	-	16	Interest	320	52,716
Allowance for Doubtful Accounts			340	-	17	Payroll	321	294,970
NET CUSTOMER RECEIVABLES (LINES 8 TO 17)				1,375,632	18	Insurance	322	-
FACTORY RECEIVABLES					19	Taxes - Payroll	323	-
Warranty Claims/P.D.I. Hyundai	PAST DUE	-	226A	212,376	20	Taxes - Sales	324	5,371
Warranty Claims/P.D.I. Other	PAST DUE	-	226B	7,653	21	Taxes - Other than P/R, Sales & Income Tax	325	73,953
Other Factory Rec/Incentives - HYN	PAST DUE	-	227A	(7,419)	22	Income Taxes - Previous Year	326	-
Other Factory Rec/Incentives - Other	PAST DUE	-	227B	-	23	Income Taxes - Current Year	327	-
Holdback - Hyundai	PAST DUE	-	228A	78,291	24	Bonuses - Employees	328	-
Holdback - Other	PAST DUE	-	228B	-	25	Bonuses - Owners	329	-
Floor Plan Assistance - Hyundai	PAST DUE	-	229	77,664	26	Pension Fund / Profit Sharing	330	-
Floor Plan Assistance - Other Franchises	PAST DUE	-	299B	-	27	Other	331	56,998
Wholesale Assistance - Hyundai	PAST DUE	-	233	-	28	Reserve for Repos, F & I, Sevice Contract Losses	332	-
TOTAL FACTORY RECEIVABLES (LINES 20 TO 28)				368,565	29	TOTAL ACCRUED LIABILITIES (LINES 16 TO 28)		484,008
Due from Finance Companies			262	60,669	30	TOTAL CURRENT LIABILITIES (LINES 14 + 29)		2,736,843
Account Payable Debit Balances			300	-	31	Lease & Rental Units	313B	-
TOTAL RECEIVABLES (LINES 18 + 29 + 30 + 31)				1,804,866	32	Deferred Income Taxes	333	-
INVENTORIES					33	Long Term Debt	334	(800,000)
Demonstrators - Hyundai		-	230A	-	34	Mortgages Payable	335	-
Demonstrators - Other		-	230B	-	35	Notes Payable - Officers & Owners	336	-
New Vehicles - Hyundai		5	231A	129,072	36	TOTAL LONG TERM LIABILITIES (LINES 31 TO 35)		(800,000)
New Vehicles - Other		14	231B	455,382	37	TOTAL LIABILITES (LINES 30 + 36)		1,936,843
L.I.F.O. Reserve - New Vehicles			234	(175,388)	38	NET WORKING CAPITAL		
TOTAL NEW VEHICLES (LINES 34 TO 38)	UNIT TOTAL	19		409,066	39			
Used Vehicles - Hyundai		5	239	127,834	40	ACTUAL $ 3,918,323	GUIDE $ -	Actual % #DIV/0!
Used Vehicles - Other		-	240	-	41	Net Working Capital = [(Assets Line 62) - (Liabilites Line 30)] + (Assets Lines 38, 43, 47)		
Memo Used Over 30 Days	-	UNITS -			42	EFFECTIVE NET WORTH		
LIFO Reserve - Used Vehicles			235	-	43			
Lease & Rental Units			287A	-	44	ACTUAL $ -	GUIDE $ -	Actual % #DIV/0!
Parts & Accessories - Hyundai			242A	431,464	45	Effective Net Worth = [(Net Worth Line 80) + (50% Assets Lines 38, 43, 47)] - (Assets Lines 75 to 80)		
Parts & Accessories - Other			242B	-	46	NET WORTH		
L.I.F.O. Reserve - P & A			251	-	47	CORPORATION ONLY TYPE S - C -	LLC	-
Gas, Oil and Grease			244	6,062	48	CAPITAL STOCK	360	500
Tires			244A	-	49	RETAINED EARNINGS	370	(706,732)
Paint and Body Shop Materials			245	-	50	DIVIDENDS	375	1,188,373
Sublet Repairs			246	85	51	ADDITIONAL PAID IN CAPITAL	376	3,499,500
Work in Process - Labor			247	4,982	52	TREASURY STOCK	377	-
Other Inventory			248	-	53	OTHER DISBURSEMENTS	378	-
Parts Inventory Adjustment			249	(31,506)	54	PROPRIETOR OR PARTNER	LLP	-
Miscellaneous Inventories			243	-	55	INVESTMENTS	380	-
TOTAL INVENTORIES (LINES 39 TO 54)				947,987	56			
Prepaid Expenses	Advertising		269	-	57			
	Taxes		270	-	58	DRAWINGS	390	-
	Insurance		271	-	59			
	Rent		272	-	60	NET INVESTMENTS (Lines 48+49-50+51-52-53+55-58)		1,604,895
	Interest	Other 273 -	274	311,217	61	UNIT SALES AND PROFIT SUMMARY		
TOTAL CURRENT ASSETS (Lines 6+32+56+57 to 61)				6,479,778	62			
FIXED ASSETS - AUTO BUSINESS ONLY					63			
	ACCT NO	COST	ACCUM DEPC'N		64			
LAND	280	-		-	65			
BLDGS & IMPRVM	281 / 351	-	-	-	66			
MACH & SHOP EQ	282 / 352	342,077	257,316	84,761	67			
PARTS & ACCESS EQ	283 / 353	-	-	-	68			
FURN & FIXTURES	284 / 354	164,428	119,209	45,219	69			
COMPANY VEH	285 / 355	49,828	21,805	28,023	70			
LEASEHOLDS	286 / 356	82,755	9,936	72,819	71			
LEASE & RENTALS	287 / 357	-	-	-	72			
TOTAL FIXED (LINES 65 TO 72)		639,088	408,266	230,822	73			
OTHER ASSETS					74			
Deposits on Contracts				-	75			
Life Insurance - Cash Value				-	76			
Notes and Accounts Receivables - Officers & Owners				-	77			
Advances to Employees, Affiliates & Others				-	78			
Other Notes and Accounts Receivable				(958,764)	79			
Intangibles, Other Investments, & Miscellaneous Assets				1,279,375	80			
TOTAL ASSETS (LINES 62+73+75 TO 80)				7,031,211	81			

	NEW UNITS		USED UNITS		
	HYUNDAI	OTHER	RETAIL	WHOLESALE	PROFIT OR LOSS
JAN	53	-	28	41	1,783
FEB	61	-	28	34	23,122
MAR	108	-	41	53	183,410
APR	145	-	32	60	354,616
MAY	114	-	34	56	250,872
JUN	85	-	31	55	138,901
JUL	110	-	23	50	294,131
AUG	94	-	23	43	222,138
SEP	62	-	17	24	85,426
OCT	73	-	12	49	226,964
NOV	74	-	7	34	172,118
DEC	101	-	6	64	1,535,986
TOT	1,080	-	282	563	3,489,467

Est. Bonuses (Page 2, lines 67+68[YTD])	-	
Est. Income Tax (Page 2, line 70 [YTD])	-	
NET PROFIT OR LOSS AFTER TAXES (Page 2, line 77 [YTD])	399	3,489,467
TOTAL NET WORTH (LINES 60 + 79)		5,094,362
TOTAL LIABILITES AND NET WORTH (LINES 37 + 80)		7,031,205

Ver 19.07.17

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HYUNDAI

2020 FINANCIAL STATEMENT | DEALER NO. SC045 | DEALER NAME STIVERS HYUNDAI | COVERING PERIOD FROM January 1, 2020 THRU December 31, 2020

HYUNDAI MOTOR COMPANY

EX. M

ELECTRONICALLY FILED - 2023 May 17 4:25 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

ASSETS			ACCT	AMOUNT OMIT CENTS	LINE
CURRENT ASSETS					
Petty Cash			200	250	1
Cash In Bank			202	1,643,185	2
Cash On Hand			203	8,452	3
Contracts in Transit			205	1,629,048	4
Securities, Money Market & CD's			260	-	5
TOTAL CASH AND CONTRACTS (LINES 1 TO 5)				3,280,935	6
RECEIVABLES					7
Customer Notes	PAST DUE	-	210	-	8
Customer Accts, Service, P&A, BS	PAST DUE	-	220	157,566	9
Accounts Receivable - Retail Vehicles			222	76,353	10
Lease & Rental Accounts			223	-	11
Wholesale & Dealer Trade			224	364,032	12
Service Contract Receivables			225	-	13
Transportation Claims			229A	-	14
Trade Receivables Affiliates			261	-	15
Finance & Insurance Receivables			264	-	16
Allowance for Doubtful Accounts			340	-	17
NET CUSTOMER RECEIVABLES (LINES 8 TO 17)				597,951	18
FACTORY RECEIVABLES					19
Warranty Claims/P.D.I. Hyundai	PAST DUE	-	226A	96,221	20
Warranty Claims/P.D.I. Other	PAST DUE	-	226B	9,064	21
Other Factory Rec/Incentives - HYN	PAST DUE	-	227A	115,276	22
Other Factory Rec/Incentives - Other	PAST DUE	-	227B	1,440	23
Holdback - Hyundai	PAST DUE	-	228A	77,026	24
Holdback - Other	PAST DUE	-	228B	-	25
Floor Plan Assistance - Hyundai	PAST DUE	-	229	76,202	26
Floor Plan Assistance - Other Franchises	PAST DUE	-	299B	52,000	27
Wholesale Assistance - Hyundai	PAST DUE	-	233	-	28
TOTAL FACTORY RECEIVABLES (LINES 20 TO 28)				427,229	29
Due from Finance Companies			262	72,192	30
Account Payable Debit Balances			300	-	31
TOTAL RECEIVABLES (LINES 18 + 29 + 30 + 31)				1,097,372	32
INVENTORIES					33
Demonstrators - Hyundai		-	230A	-	34
Demonstrators - Other		-	230B	-	35
New Vehicles - Hyundai		73	231A	1,457,381	36
New Vehicles - Other		214	231B	6,176,000	37
L.I.F.O. Reserve - New Vehicles			234	(94,567)	38
TOTAL NEW VEHICLES (LINES 34 TO 38)	**UNIT TOTAL**	**287**		7,538,814	39
Used Vehicles - Hyundai		77	239	1,189,507	40
Used Vehicles - Other		-	240	-	41
Memo Used Over 30 Days	- UNITS	-			42
LIFO Reserve - Used Vehicles			235	-	43
Lease & Rental Units			287A	-	44
Parts & Accessories - Hyundai			242A	283,410	45
Parts & Accessories - Other			242B	-	46
L.I.F.O. Reserve - P & A			251	-	47
Gas, Oil and Grease			244	8,433	48
Tires			244A	-	49
Paint and Body Shop Materials			245	-	50
Sublet Repairs			246	325	51
Work in Process - Labor			247	2,571	52
Other Inventory			248	-	53
Parts Inventory Adjustment			249	(31,492)	54
Miscellaneous Inventories			243	-	55
TOTAL INVENTORIES (LINES 39 TO 54)				8,991,568	56
Prepaid Expenses	Advertising		269	-	57
	Taxes		270	-	58
	Insurance		271	-	59
	Rent		272	-	60
	Interest Other	273 -	274	81,877	61
TOTAL CURRENT ASSETS (Lines 6+32+56+57 to 61)				13,451,752	62

FIXED ASSETS - AUTO BUSINESS ONLY	ACCT NO	COST	ACCUM DEPC'N		LINE
					63
LAND	280	-		-	64
BLDGS & IMPRVM	281 / 351	-	-	-	65
MACH & SHOP EQ	282 / 352	321,738	193,179	128,559	66
PARTS & ACCESS EQ	283 / 353	-	-	-	67
FURN & FIXTURES	284 / 354	165,642	86,085	79,557	68
COMPANY VEH	285 / 355	34,159	-	34,159	69
LEASEHOLDS	286 / 356	74,606	7,121	67,485	70
LEASE & RENTALS	287 / 357	-	-	-	71
TOTAL FIXED (LINES 65 TO 72)		596,145	286,385	309,760	72
OTHER ASSETS					73
Deposits on Contracts			290	-	74
Life Insurance - Cash Value			291	-	75
Notes and Accounts Receivables - Officers & Owners			293	-	76
Advances to Employees, Affiliates & Others			294	-	77
Other Notes and Accounts Receivable			295	-	78
Intangibles, Other Investments, & Miscellaneous Assets			296	1,724,375	79
TOTAL ASSETS (LINES 62+73+75 TO 80)				15,485,887	80

LIABILITIES			ACCT	AMOUNT OMIT CENTS	LINE
CURRENT LIABILITIES					
ACCOUNTS PAYABLE - Trade Creditors			300	322,139	1
Service, P & A, Body Shop Credit Balances			220	-	2
Licence & Registration Fees			301	56,320	3
Customer Deposits	CONTRACT UNITS	-	222	-	4
Vehicle Protection & Warranties Payable			303	-	5
Vehicle Lien Payable			309	342,075	6
NOTES PAYABLE					7
New Vehicles & Demonstrators - Hyundai			310	9,230,158	8
Used Vehicles - Hyundai			311	-	9
Used Vehicles - Other			312	594,563	10
Lease & Rental Units			313A	-	11
Other			314	-	12
Current Portion - Long Term Debt			315	-	13
TOTAL ACCOUNTS & NOTES PAYABLE (LINES 1 TO 13)				10,545,255	14
ACCRUED LIABILITES					15
Interest			320	32,568	16
Payroll			321	156,085	17
Insurance			322	-	18
Taxes - Payroll			323	-	19
Taxes - Sales			324	3,000	20
Taxes - Other than P/R, Sales & Income Tax			325	-	21
Income Taxes - Previous Year			326	-	22
Income Taxes - Current Year			327	-	23
Bonuses - Employees			328	-	24
Bonuses - Owners			329	-	25
Pension Fund / Profit Sharing			330	-	26
Other			331	84,315	27
Reserve for Repos, F & I, Sevice Contract Losses			332	-	28
TOTAL ACCRUED LIABILITIES (LINES 16 TO 28)				275,968	29
TOTAL CURRENT LIABILITIES (LINES 14 + 29)				10,821,223	30
Lease & Rental Units			313B	-	31
Deferred Income Taxes			333	-	32
Long Term Debt			334	900,000	33
Mortgages Payable			335	-	34
Notes Payable - Officers & Owners			336	-	35
TOTAL LONG TERM LIABILITIES (LINES 31 TO 35)				900,000	36
TOTAL LIABILITES (LINES 30 + 36)				11,721,223	37

NET WORKING CAPITAL

ACTUAL $ 2,725,096 | GUIDE $ - | Actual % #DIV/0!

Net Working Capital = [(Assets Line 62) - (Liabilites Line 30)] + (Assets Lines 38, 43, 47)

EFFECTIVE NET WORTH

ACTUAL $ - | GUIDE $ - | Actual % #DIV/0!

Effective Net Worth = [(Net Worth Line 80) + (50% Assets Lines 38, 43, 47)] - (Assets Lines 75 to 80)

NET WORTH						LINE
CORPORATION ONLY	TYPE S -	C -	LLC	-		47
CAPITAL STOCK			360	500		48
RETAINED EARNINGS			370	(1,253,472)		49
DIVIDENDS			375	695,880		50
ADDITIONAL PAID IN CAPITAL			376	3,499,500		51
TREASURY STOCK			377	-		52
OTHER DISBURSEMENTS			378	-		53
PROPRIETOR OR PARTNER			LLP	-		54
INVESTMENTS			380	-		55
						56
						57
DRAWINGS			390	-		58
						59
NET INVESTMENTS (Lines 48+49-50+51-52-53+55-58)				2,942,408		60

UNIT SALES AND PROFIT SUMMARY

	NEW UNITS		USED UNITS			LINE
	HYUNDAI	OTHER	RETAIL	WHOLESALE	PROFIT OR LOSS	
JAN	50	-	21	42	(45,849)	61
FEB	62	-	23	29	(25,953)	62
MAR	52	-	9	22	(9,914)	63
APR	39	-	11	11	(39,225)	64
MAY	53	-	22	17	101,806	65
JUN	62	-	21	25	93,313	66
JUL	68	-	13	28	110,201	67
AUG	70	-	17	15	126,783	68
SEP	71	-	22	12	144,072	69
OCT	72	-	28	33	131,380	70
NOV	74	-	26	18	125,943	71
DEC	92	-	33	58	109,703	72
TOT	765	-	246	310	822,260	73
Est. Bonuses (Page 2, lines 67+68[YTD])					(217,000)	74
Est. Income Tax (Page 2, line 70 [YTD])					-	75
NET PROFIT OR LOSS AFTER TAXES (Page 2, line 71[YTD])				399	822,260	76
TOTAL NET WORTH (LINES 60 + 79)					3,764,668	77
TOTAL LIABILITES AND NET WORTH (LINES 37 + 80)					15,485,891	78

Ver 19.07.17

ELECTRONICALLY FILED - 2023 May 17 4:25 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

GENESIS MOTOR COMPANY

2021 FINANCIAL STATEMENT | DEALER NO. #N/A | DEALER NAME STIVERS HYUNDAI | COVERING PERIOD FROM January 1, 2021 THRU January 31, 2022 | PAGE 1

ASSETS			ACCT	AMOUNT OMIT CENTS	LINE
CURRENT ASSETS					
Petty Cash			200	-	1
Cash In Bank			202	-	2
Cash On Hand			203	-	3
Contracts in Transit			205	137,514	4
Securities, Money Market & CD's			260	-	5
TOTAL CASH AND CONTRACTS (LINES 1 TO 5)				137,514	6
RECEIVABLES					7
Customer Notes	PAST DUE	-	210	-	8
Customer Accts, Service, P&A, BS	PAST DUE	-	220	-	9
Accounts Receivable - Retail Vehicles			222	-	10
Lease & Rental Accounts			223	-	11
Wholesale & Dealer Trade			224	-	12
Service Contract Receivables			225	-	13
Transportation Claims			229A	-	14
Trade Receivables Affiliates			261	-	15
Finance & Insurance Receivables			264	-	16
Allowance for Doubtful Accounts			340	-	17
NET CUSTOMER RECEIVABLES (LINES 8 TO 17)				-	18
FACTORY RECEIVABLES					19
Warranty Claims/P.D.I. - Genesis	PAST DUE	-	226A	194	20
Warranty Claims/P.D.I. - Other	PAST DUE	-	226B	270	21
Other Factory Rec/Incentives - HYN	PAST DUE	-	227A	(7,250)	22
Other Factory Rec/Incentives - Other	PAST DUE	-	227B	-	23
Holdback - Genesis	PAST DUE	-	228A	-	24
Holdback - Other Franchise	PAST DUE	-	228B	-	25
Floor Plan Assistance - Genesis	PAST DUE	-	229	7,326	26
Floor Plan Assistance - Other Franchise	PAST DUE	-	229	-	27
Wholesale Assistance - Genesis	PAST DUE	-	233	-	28
TOTAL FACTORY RECEIVABLES (LINES 20 TO 28)				540	29
Due from Finance Companies			262	2,663	30
Account Payable Debit Balances			300	-	31
TOTAL RECEIVABLES (LINES 18 + 29 + 30 + 31)				3,203	32
INVENTORIES					33
Demonstrators - Genesis		-	230A	-	34
Demonstrators - Other		-	230B	-	35
New Vehicles - Genesis		4	231A	220,536	36
New Vehicles - Other		-	231B	-	37
L.I.F.O. Reserve - New Vehicles			234	(31,911)	38
TOTAL NEW VEHICLES (LINES 34 TO 38)	UNIT TOTAL	4		188,625	39
Used Vehicles - Genesis		-	239	-	40
Used Vehicles - Other		-	240	-	41
Memo: Used Over 30 Days	-	UNITS -			42
LIFO Reserve - Used Vehicles			235	-	43
Lease & Rental Units			287A	-	44
Parts & Accessories - Genesis			242A	9,170	45
Parts & Accessories - Other			242B	-	46
L.I.F.O. Reserve - P & A			251	-	47
Gas, Oil and Grease			244	-	48
Tires			244A	-	49
Paint and Body Shop Materials			245	-	50
Sublet Repairs			246	-	51
Work in Process - Labor			247	-	52
Other Inventory			248	-	53
Parts Inventory Adjustment			249	-	54
Miscellaneous Inventories			243	-	55
TOTAL INVENTORIES (Lines 39 to 55)				197,795	56
Prepaid Expenses: Advertising			269	-	57
Taxes			270	-	58
Insurance			271	-	59
Rent			272	-	60
Interest / Other	-	273	274	-	61
TOT CURRENT ASSET (Lines 6+32+56+57 to 61)				338,512	62
FIXED ASSETS - AUTO BUSINESS ONLY					63

	ACCT NO	COST	ACCUM DEPC'N		64
LAND	280	-		-	65
BLDGS & IMPRVM	281 / 351	-	-	-	66
MACH & SHOP EQ	282 / 352	-	-	-	67
PARTS & ACCESS EQ	283 / 353	-	-	-	68
FURN & FIXTURES	284 / 354	16,615	23,835	(7,220)	69
COMPANY VEH	285 / 355	136,998	33,000	103,998	70
LEASEHOLDS	286 / 356	20,000	-	20,000	71
LEASE & RENTALS	287 / 357	-	-	-	72
TOTAL FIXED (Lines 62+73+75 to 80)		173,613	56,835	116,778	73
OTHER ASSETS					74
Deposits on Contracts			290	-	75
Life Insurance - Cash Value			291	-	76
Notes and Accounts Receivables - Officers & Owners			293	-	77
Advances to Employees, Affiliates and Others			294	-	78
Other Notes and Accounts Receivable			295	262,306	79
Intangibles, Other Investments & Miscellaneous Assets			296	-	80
TOTAL ASSETS (LINES 62+73+75 TO 80)				717,596	81

LIABILITIES			ACCT	AMOUNT OMIT CENTS	LINE
CURRENT LIABILITIES					
ACCOUNTS PAYABLE - Trade Creditors			300	27,464	1
Service, P & A, Body Shop Credit Balances			220	-	2
License & Registration Fees			301	-	3
Customer Deposits	# Deposits	-	222	-	4
Vehicle Protection & Warranties Payable			303	-	5
Vehicle Lien Payable			309	-	6
NOTES PAYABLE					7
New Vehicles and Demonstrators			310/310G	290,287	8
Used Vehicles - Genesis			311/311G	-	9
Used Vehicles - Other			312	-	10
Lease and Rental Units			313A	-	11
Other			314	-	12
Current Portion - Long Term Debt			315	-	13
TOT ACCOUNTS & NOTES PAYABLE (LINES 1 TO 13)				317,751	14
ACCRUED LIABILITES					15
Interest			320	-	16
Payroll			321	-	17
Insurance			322	-	18
Taxes - Payroll			323	-	19
Taxes - Sales			324	-	20
Taxes - Other than P/R, Sales & Income Tax			325	28	21
Income Taxes - Previous Year			326	-	22
Income Taxes - Current Year			327	-	23
Bonuses - Employees			328	-	24
Bonuses - Owners			329	-	25
Pension Fund / Profit Sharing			330	-	26
Other			331	-	27
Reserve for Repos, F & I, Sevice Contract Losses			332	-	28
TOTAL ACCRUED LIABILITIES (LINES 16 TO 28)				28	29
TOTAL CURRENT LIABILITIES (LINES 14 + 29)				317,779	30
Lease and Rental Units			313B	-	31
Deferred Income Taxes			333	-	32
Long Term Debt			334	-	33
Mortgages Payable			335	-	34
Notes Payable - Officers & Owners			336	-	35
TOTAL LONG TERM LIABILITIES (LINES 31 TO 35)				-	36
TOTAL LIABILITES (LINES 30 + 36)				317,779	37

NET WORKING CAPITAL

ACTUAL $ 52,644 | GUIDE 0 | Actual % Guide 0.00%

Net Working Capital = [(Assets Line 62) - (Liabilites Line 30)] + (Assets Lines 38, 43, 47)

EFFECTIVE NET WORTH

ACTUAL $ - | GUIDE 0 | Actual % Guide -

50% Assets Lines 38, 43, 47)] - (Assets Lines 75 to 80)

ET WORTH					
CORPORATION ONLY	TYPE S -	C -		LLC -	
CAPITAL STOCK				360	-
RETAINED EARNINGS				370	150,747
DIVIDENDS				375	-
ADDITIONAL PAID IN CAPITAL				376	-
TREASURY STOCK				377	-
OTHER DISPURSEMENTS				378	-
PROPRIETOR OR PARTNER				LLP	-
INVESTMENTS				380	-
DRAWINGS				390	-
NET INVESTMENTS (Lines 48+49-50+51-52-53+55-58)					150,747

UNITS SALES AND PROFIT SUMMARY

	NEW UNITS		USED UNITS		PROFIT OR (LOSS)
	GENESIS	OTHER	RETAIL	WHOLESA	
JAN	4	-	-	-	23,222
FEB	3	-	1	-	16,205
MAR	3	-	-	1	3,723
APR	4	-	1	-	12,546
MAY	6	-	-	1	29,566
JUN	7	-	-	-	24,827
JUL	12	-	-	-	40,465
AUG	2	-	-	-	5,415
SEP	8	-	-	-	30,464
OCT	8	-	-	-	32,916
NOV	3	-	-	-	(2,136)
DEC	7	-	-	-	31,855
TOT	67	-	2	2	249,068

Est. Bonuses (Page 2, lines 67+68 [YTD])		-
Est.Incom Tax (Page 2, line 70[YTD])		-
NET PROFIT OR LOSS AFTER TAXES (Page 2, line 71 [YTD])	399	249,068
TOTAL NET WORTH (LINES 60 + 79)		399,815
TOTAL LIABILITES AND NET WORTH (LINES 37 + 80)		717,594

Ver 20.04.23

2020 FINANCIAL STATEMENT

DEALER NAME STIVERS HYUNDAI

DEALER NO. #N/A

COVERING PERIOD FROM January 1, 2020 THRU December 31, 2020

GENESIS MOTOR COMPANY

EX. N

ELECTRONICALLY FILED - 2023 May 17 4:25 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

ASSETS			ACCT	AMOUNT OMIT CENTS	LINE
CURRENT ASSETS					
Petty Cash			200	-	1
Cash In Bank			202	-	2
Cash On Hand			203	(106)	3
Contracts in Transit			205	130,481	4
Securities, Money Market & CD's			260	-	5
TOTAL CASH AND CONTRACTS (LINES 1 TO 5)				130,375	6
RECEIVABLES					7
Customer Notes	PAST DUE	-	210	-	8
Customer Accts, Service, P&A, BS	PAST DUE	-	220	2,494	9
Accounts Receivable - Retail Vehicles			222	15,550	10
Lease & Rental Accounts			223	-	11
Wholesale & Dealer Trade			224	-	12
Service Contract Receivables			225	-	13
Transportation Claims			229A	-	14
Trade Receivables Affiliates			261	-	15
Finance & Insurance Receivables			264	-	16
Allowance for Doubtful Accounts			340	-	17
NET CUSTOMER RECEIVABLES (LINES 8 TO 17)				18,044	18
FACTORY RECEIVABLES					19
Warranty Claims/P.D.I. - Genesis	PAST DUE	-	226A	9,019	20
Warranty Claims/P.D.I. - Other	PAST DUE	-	226B	1,309	21
Other Factory Rec/Incentives - HYN	PAST DUE	-	227A	(1,000)	22
Other Factory Rec/Incentives - Other	PAST DUE	-	227B	-	23
Holdback - Genesis	PAST DUE	-	228A	-	24
Holdback - Other Franchise	PAST DUE	-	228B	-	25
Floor Plan Assistance - Genesis	PAST DUE	-	229	13,374	26
Floor Plan Assistance - Other Franchise	PAST DUE	-	229	-	27
Wholesale Assistance - Genesis	PAST DUE	-	233	-	28
TOTAL FACTORY RECEIVABLES (LINES 20 TO 28)				22,702	29
Due from Finance Companies			262	3,491	30
Account Payable Debit Balances			300	-	31
TOTAL RECEIVABLES (LINES 18 + 29 + 30 + 31)				44,237	32
INVENTORIES					33
Demonstrators - Genesis		-	230A	-	34
Demonstrators - Other		-	230B	-	35
New Vehicles - Genesis		17	231A	926,423	36
New Vehicles - Other		-	231B	-	37
L.I.F.O. Reserve - New Vehicles			234	(11,223)	38
TOTAL NEW VEHICLES (LINES 34 TO 38)	**UNIT TOTAL**	**17**		915,200	39
Used Vehicles - Genesis		-	239	-	40
Used Vehicles - Other		-	240	-	41
Memo: Used Over 30 Days	-	UNITS -			42
LIFO Reserve - Used Vehicles			235	-	43
Lease & Rental Units			287A	-	44
Parts & Accessories - Genesis			242A	9,157	45
Parts & Accessories - Other			242B	-	46
L.I.F.O. Reserve - P & A			251	-	47
Gas, Oil and Grease			244	713	48
Tires			244A	-	49
Paint and Body Shop Materials			245	-	50
Sublet Repairs			246	-	51
Work in Process - Labor			247	216	52
Other Inventory			248	-	53
Parts Inventory Adjustment			249	-	54
Miscellaneous Inventories			243	-	55
TOTAL INVENTORIES (Lines 39 to 55)				925,286	56
Prepaid Expenses:	Advertising		269	-	57
	Taxes		270	-	58
	Insurance		271	-	59
	Rent		272	-	60
	Interest / Other	- 273	274	-	61
TOT CURRENT ASSET (Lines 6+32+56+57 to 61)				1,099,898	62
FIXED ASSETS - AUTO BUSINESS ONLY					63

	ACCT NO	COST	ACCUM DEPC'N		64
LAND	280	-		-	65
BLDGS & IMPRVM	281 / 351	-	-	-	66
MACH & SHOP EQ	282 / 352	-	-	-	67
PARTS & ACCESS EQ	283 / 353	-	-	-	68
FURN & FIXTURES	284 / 354	16,615	6,706	9,909	69
COMPANY VEH	285 / 355	67,978	-	67,978	70
LEASEHOLDS	286 / 356	-	-	-	71
LEASE & RENTALS	287 / 357	-	-	-	72
TOTAL FIXED (Lines 62+73+75 to 80)		84,593	6,706	77,887	73

OTHER ASSETS			
Deposits on Contracts	290	-	75
Life Insurance - Cash Value	291	-	76
Notes and Accounts Receivables - Officers & Owners	293	-	77
Advances to Employees, Affiliates and Others	294	-	78
Other Notes and Accounts Receivable	295	-	79
Intangibles, Other Investments & Miscellaneous Assets	296	-	80
TOTAL ASSETS (LINES 62+73+75 TO 80)		1,177,785	81

LIABILITIES			ACCT	AMOUNT OMIT CENTS	LINE
CURRENT LIABILITIES					
ACCOUNTS PAYABLE - Trade Creditors			300	16,734	1
Service, P & A, Body Shop Credit Balances			220	-	2
License & Registration Fees			301	2,580	3
Customer Deposits	# Deposits	-	222	-	4
Vehicle Protection & Warranties Payable			303	270	5
Vehicle Lien Payable			309	-	6
NOTES PAYABLE					7
New Vehicles and Demonstrators			310/310G	1,101,002	8
Used Vehicles - Genesis			311/311G	-	9
Used Vehicles - Other			312	-	10
Lease and Rental Units			313A	-	11
Other			314	-	12
Current Portion - Long Term Debt			315	-	13
TOT ACCOUNTS & NOTES PAYABLE (LINES 1 TO 13)				1,120,586	14
ACCRUED LIABILITES					15
Interest			320	-	16
Payroll			321	180	17
Insurance			322	-	18
Taxes - Payroll			323	-	19
Taxes - Sales			324	47	20
Taxes - Other than P/R, Sales & Income Tax			325	-	21
Income Taxes - Previous Year			326	-	22
Income Taxes - Current Year			327	-	23
Bonuses - Employees			328	-	24
Bonuses - Owners			329	-	25
Pension Fund / Profit Sharing			330	-	26
Other			331	-	27
Reserve for Repos, F & I, Sevice Contract Losses			332	-	28
TOTAL ACCRUED LIABILITIES (LINES 16 TO 28)				227	29
TOTAL CURRENT LIABILITIES (LINES 14 + 29)				1,120,813	30
Lease and Rental Units			313B	-	31
Deferred Income Taxes			333	-	32
Long Term Debt			334	-	33
Mortgages Payable			335	-	34
Notes Payable - Officers & Owners			336	-	35
TOTAL LONG TERM LIABILITIES (LINES 31 TO 35)				-	36
TOTAL LIABILITES (LINES 30 + 36)				1,120,813	37

NET WORKING CAPITAL

ACTUAL $ (9,692) GUIDE 0 Actual % Guide 0.00%

Net Working Capital = [(Assets Line 62) - (Liabilites Line 30)] + (Assets Lines 38, 43, 47)

EFFECTIVE NET WORTH

ACTUAL $ - GUIDE 0 Actual % Guide -

50% Assets Lines 38, 43, 47)] - (Assets Lines 75 to 80)

NET WORTH					
CORPORATION ONLY	TYPE S -	C -	LLC -		
CAPITAL STOCK			360	-	48
RETAINED EARNINGS			370	(3,138)	49
DIVIDENDS			375	-	50
ADDITIONAL PAID IN CAPITAL			376	-	51
TREASURY STOCK			377	-	52
OTHER DISPURSEMENTS			378	-	53
PROPRIETOR OR PARTNER			**LLP**	-	54
INVESTMENTS			380	-	55
					56
					57
DRAWINGS			390	-	58
					59
NET INVESTMENTS (Lines 48+49-50+51-52-53+55-58)				(3,138)	60

UNITS SALES AND PROFIT SUMMARY

	NEW UNITS		USED UNITS		PROFIT OR (LOSS)
	GENESIS	OTHER	RETAIL	WHOLESA	
JAN	5	-	-	1	23,286
FEB	5	-	-	1	(12,645)
MAR	3	-	-	-	11,124
APR	3	-	-	1	8,137
MAY	2	-	-	-	2,620
JUN	4	-	-	-	1,911
JUL	1	-	-	-	(1,667)
AUG	1	-	-	-	(3,556)
SEP	-	-	-	-	210
OCT	2	-	-	-	6,344
NOV	1	-	-	-	6,380
DEC	4	-	-	-	17,966
TOT	31	-	-	3	60,110

Est. Bonuses (Page 2, lines 67+68 [YTD])	-	
Est.Incom Tax (Page 2, line 70[YTD])	-	
NET PROFIT OR LOSS AFTER TAXES (Page 2, line 71 [YTD])	**399**	60,110
TOTAL NET WORTH (LINES 60 + 79)		56,972
TOTAL LIABILITES AND NET WORTH (LINES 37 + 80)		1,177,785

Ver 20.04.23

EX. O

HYUNDAI

DEALER NAME STIVERS HYUNDAI

2022 FINANCIAL STATEMENT DEALER NO. SC045 COVERING PERIOD FROM January 1, 2022 THRU March 31, 2022

ASSETS			ACCT	AMOUNT OMIT CENTS	LINE	LIABILITIES	ACCT	AMOUNT OMIT CENTS
CURRENT ASSETS						CURRENT LIABILITIES		
Petty Cash			200	250	1	ACCOUNTS PAYABLE - Trade Creditors	300	473,402
Cash In Bank			202	3,759,313	2	Service, P & A, Body Shop Credit Balances	220	-
Cash On Hand			203	(21,761)	3	Licence & Registration Fees	301	79,210
Contracts in Transit			205	1,314,553	4	Customer Deposits CONTRACT UNITS -	222	-
Securities, Money Market & CD's			260	-	5	Vehicle Protection & Warranties Payable	303	-
TOTAL CASH AND CONTRACTS (LINES 1 TO 5)				5,052,355	6	Vehicle Lien Payable	309	238,189
RECEIVABLES					7	NOTES PAYABLE		
Customer Notes	PAST DUE	-	210	-	8	New Vehicles & Demonstrators - Hyundai	310	1,081,380
Customer Accts, Service, P&A, BS	PAST DUE	-	220	315,983	9	New Vehicles and Demonstrators - Other Franchise	310A	-
Accounts Receivable - Retail Vehicles			222	(25,123)	10	Used Vehicles - Hyundai	311	-
Lease & Rental Accounts			223	-	11	Used Vehicles - Other	312	90,730
Wholesale & Dealer Trade			224	544,706	12	Lease & Rental Units	313A	-
Service Contract Receivables			225	1,027	13	Other	314	-
Transportation Claims			229A	-	14	Current Portion - Long Term Debt	315	-
Trade Receivables Affiliates			261	-	15	TOTAL ACCOUNTS & NOTES PAYABLE (LINES 1 TO 14)		1,962,911
Finance & Insurance Receivables			264	-	16	ACCRUED LIABILITES		
Allowance for Doubtful Accounts			340	-	17	Interest	320	67,275
NET CUSTOMER RECEIVABLES (LINES 8 TO 17)				836,593	18	Payroll	321	366,192
FACTORY RECEIVABLES					19	Insurance	322	-
Warranty Claims/P.D.I. Hyundai	PAST DUE	-	226A	201,092	20	Taxes - Payroll	323	-
Warranty Claims/P.D.I. Other	PAST DUE	-	226B	4,200	21	Taxes - Sales	324	10,774
Other Factory Rec/Incentives - HYN	PAST DUE	-	227A	(38,115)	22	Taxes - Other than, P/R, Sales & Income Tax	325	15,907
Other Factory Rec/Incentives - Other	PAST DUE	-	227B	-	23	Income Taxes - Previous Year	326	-
Holdback - Hyundai	PAST DUE	-	228A	84,070	24	Income Taxes - Current Year	327	-
Holdback - Other	PAST DUE	-	228B	-	25	Bonuses - Employees	328	-
Floor Plan Assistance - Hyundai	PAST DUE	-	229	84,130	26	Bonuses - Owners	329	-
Floor Plan Assistance - Other Franchises	PAST DUE	-	299B	-	27	Pensions Fund / Profit Sharin	330	-
Wholesale Assistance - Hyundai	PAST DUE	-	233	-	28	Other	331	84,371
TOTAL FACTORY RECEIVABLES (LINES 20 TO 28)				335,377	29	Reserve for Repos, F & I, Sevice Contract Losses	332	-
Due from Finance Companies			262	93,007	30	TOTAL ACCRUED LIABILITIES (LINES 17 TO 29)		544,519
Account Payable Debit Balances			300	-	31	TOTAL CURRENT LIABILITIES (LINES 15 + 30)		2,507,430
TOTAL RECEIVABLES (LINES 18 + 29 + 30 + 31)				1,264,977	32	Lease & Rental Units	313b	-
INVENTORIES					33	Deferred Income Taxes	333	-
Demonstrators - Hyundai		-	230A	-	34	Long Term Debt	334	(800,000)
Demonstrators - Other		-	230B	-	35	Mortgages Payable	335	-
New Vehicles - Hyundai		8	231A	257,074	36	Notes Payable - Officers & Owners	336	-
New Vehicles - Other		-	231B	-	37	TOTAL LONG TERM LIABILITIES (LINES 32 - 36)		(800,000)
L.I.F.O. Reserve - New Vehicles			234	(175,388)	38	TOTAL LIABILITES (LINES 31 + 37)		1,707,430
TOTAL NEW VEHICLES (LINES 34 TO 38)	UNIT TOTAL	8		81,686	39	NET WORKING CAPITAL		
Used Vehicles - Hyundai		11	239	233,443	40	ACTUAL / GUIDE / Actual %		
Used Vehicles - Other		-	240	-	41	$ 5,205,443 / $ 1,495,000 / 348.19%		
Memo Used Over 30 Days -	UNITS -				42	Net Working Capital = [(Assets Line 62) - (Liabilities Line 31)] + (Assets Lines 38, 43, 47)		
LIFO Reserve - Used Vehicles			235	-	43	EFFECTIVE NET WORTH		
Lease & Rental Units			287A	-	44	ACTUAL / GUIDE / Actual %		
Parts & Accessories - Hyundai			242A	456,858	45	$ - / $ 748,000 / 74800000.00%		
Parts & Accessories - Other			242B	-	46	Effective Net Worth = [(Net Worth Line 80) + (50% Assets Lines 38, 43, 47)] - (Assets Lines 75 to 80)		
L.I.F.O. Reserve - P & A			251	-	47	NET WORTH		
Gas, Oil and Grease			244	11,052	48	CORPORATION ONLY TYPE S - C -	LLC	-
Tires			244A	-	49	CAPITAL STOCK	360	500
Paint and Body Shop Materials			245	-	50	RETAINED EARNINGS	370	3,765,551
Sublet Repairs			246	95	51	DIVIDENDS	375	(1,188,373)
Work in Process - Labor			247	4,151	52	ADDITIONAL PAID IN CAPITAL	376	3,499,500
Other Inventory			248	(4,332)	53	TREASURY STOCK	377	-
Parts Inventory Adjustment			249	(37,936)	54	OTHER DISBURSEMENTS	378	-
Miscellaneous Inventories			243	-	55	PROPRIETOR OR PARTNER	LLP	-
TOTAL INVENTORIES (LINES 39 TO 54)				745,017	56	INVESTMENTS	381	-
Prepaid Expenses	Advertising		269	-	57			
	Taxes		270	-	58			
	Insurance		271	-	59	DRAWINGS	391	-
	Rent		272	-	60	NET INVESTMENTS (Lines 48+49-50+51-52-53+55-58)		6,077,178
	Interest	Other 273 -	274	475,136	61	UNIT SALES AND PROFIT SUMMARY		
TOTAL CURRENT ASSETS (Lines 6+32+56+57 to 61)				7,537,485	62			
FIXED ASSETS - AUTO BUSINESS ONLY					63			
	ACCT NO	COST	ACCUM DEPC'N		64			
LAND	280	-		-	65			
BLDGS & IMPRVM	281 / 351	-	-	-	66			
MACH & SHOP EQ	282 / 352	344,730	271,854	72,876	67			
PARTS & ACCESS EQ	283 / 353	-	-	-	68			
FURN & FIXTURES	284 / 354	170,172	126,478	43,694	69			
COMPANY VEH	285 / 355	46,513	23,632	22,881	70			
LEASEHOLDS	286 / 356	97,755	10,757	86,998	71			
LEASE & RENTALS	287 / 357	-	-	-	72			
TOTAL FIXED (LINES 65 TO 72)		659,170	432,721	226,449	73			
OTHER ASSETS					74			
Deposits on Contracts			290	-	75			
Life Insurance - Cash Value			291	-	76			
Notes and Accounts Receivables - Officers & Owners			293	-	77			
Advances to Employees, Affiliates & Others			294	-	78			
Other Notes and Accounts Receivable			295	(16,939)	79			
Intangibles, Other Investments, & Miscellaneous Assets			296	1,218,188	80			
TOTAL ASSETS (LINES 62+73+75 TO 80)				8,965,183	81			

	NEW UNITS		USED UNITS		
	HYUNDAI	OTHER	RETAIL	WHOLESALE	PROFIT OR LOSS
JAN	111	-	6	52	347,931
FEB	99	-	15	37	333,672
MAR	137	-	17	47	498,972
APR	-	-	-	-	-
MAY	-	-	-	-	-
JUN	-	-	-	-	-
JUL	-	-	-	-	-
AUG	-	-	-	-	-
SEP	-	-	-	-	-
OCT	-	-	-	-	-
NOV	-	-	-	-	-
DEC	-	-	-	-	-
TOT	347	-	38	136	1,180,575

Est. Bonuses (Page 2, lines 73+74 [YTD])		-
Est. Income Tax (Page 2, line 76 [YTD])		-
NET PROFIT OR LOSS AFTER TAXES YTD (Page 2, line 78 [YTD])	399	1,180,575
TOTAL NET WORTH (LINES 60 + 79)		7,257,753
TOTAL LIABILITES AND NET WORTH (LINES 37 + 80)		8,965,183

Ver 19.07.17

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GENESIS MOTOR COMPANY

2022 FINANCIAL STATEMENT | DEALER NO. #N/A | DEALER NAME STIVERS HYUNDAI | COVERING PERIOD FROM January 1, 2022 THRU March 31, 2022 | PAGE 1

ASSETS			ACCT	AMOUNT OMIT CENTS	LINE	LIABILITIES	ACCT	AMOUNT OMIT CENTS
CURRENT ASSETS						CURRENT LIABILITIES		
Petty Cash			200	-	1	ACCOUNTS PAYABLE - Trade Creditors	300	35,499
Cash In Bank			202	(1)	2	Service, P & A, Body Shop Credit Balances	220	-
Cash On Hand			203	-	3	License & Registration Fees	301	2,100
Contracts in Transit			205	118,635	4	Customer Deposits # Deposits -	222	-
Securities, Money Market & CD's			260	-	5	Vehicle Protection & Warranties Payable	303	-
TOTAL CASH AND CONTRACTS (LINES 1 TO 5)				118,634	6	Vehicle Lien Payable	309	-
RECEIVABLES					7	NOTES PAYABLE		
Customer Notes	PAST DUE	-	210	-	8	New Vehicles and Demonstrators - Genesis	310	433,526
Customer Accts, Service, P&A, BS	PAST DUE	-	220	-	9	New Vehicles and Demonstrators - Other Franchise	310A	-
Accounts Receivable - Retail Vehicles			222	-	10	Used Vehicles - Genesis	311	-
Lease & Rental Accounts			223	-	11	Used Vehicles - Other	312	-
Wholesale & Dealer Trade			224	-	12	Lease and Rental Units	313A	-
Service Contract Receivables			225	-	13	Other Notes Payable	314	-
Transportation Claims			229A	-	14	Current Portion - Long Term Debt	315	-
Trade Receivables Affiliates			261	-	15	TOT ACCOUNTS & NOTES PAYABLE (LINES 1 TO 14)		471,125
Finance & Insurance Receivables			264	-	16	ACCRUED LIABILITES		
Allowance for Doubtful Accounts			340	-	17	Interest	320	-
NET CUSTOMER RECEIVABLES (LINES 8 TO 17)				-	18	Payroll	321	-
FACTORY RECEIVABLES					19	Insurance	322	-
Warranty Claims/P.D.I. - Genesis	PAST DUE	-	226A	764	20	Taxes - Payroll	323	-
Warranty Claims/P.D.I. - Other	PAST DUE	-	226B	594	21	Taxes - Sales	324	-
Other Factory Rec/Incentives - HYN	PAST DUE	-	227A	(8,250)	22	Taxes - Other than P/R, Sales & Income Tax	325	18
Other Factory Rec/Incentives - Other	PAST DUE	-	227B	-	23	Income Taxes - Previous Year	326	-
Holdback - Genesis	PAST DUE	-	228A	-	24	Income Taxes - Current Year	327	-
Holdback - Other Franchise	PAST DUE	-	228B	-	25	Bonuses - Employees	328	-
Floor Plan Assistance - Genesis	PAST DUE	-	229	7,519	26	Bonuses - Owners	329	-
Floor Plan Assistance - Other Franchise	PAST DUE	-	229	-	27	Pension Fund / Profit Sharing	330	-
Wholesale Assistance - Genesis	PAST DUE	-	233	-	28	Other	331	-
TOTAL FACTORY RECEIVABLES (LINES 20 TO 28)				627	29	Reserve for Repos, F & I, Sevice Contract Losses	332	-
Due from Finance Companies			262	2,944	30	TOTAL ACCRUED LIABILITIES (LINES 17 TO 29)		18
Account Payable Debit Balances			300	-	31	TOTAL CURRENT LIABILITIES (LINES 15 + 30)		471,143
TOTAL RECEIVABLES (LINES 18 + 29 + 30 + 31)				3,571	32	Lease and Rental Units	313B	-
INVENTORIES					33	Deferred Income Taxes	333	-
Demonstrators - Genesis		-	230A	-	34	Long Term Debt	334	-
Demonstrators - Other		-	230B	-	35	Mortgages Payable	335	-
New Vehicles - Genesis		7	231A	383,152	36	Notes Payable - Officers & Owners	336	-
New Vehicles - Other		-	231B	-	37	TOTAL LONG TERM LIABILITIES (LINES 32 - 36)		-
L.I.F.O. Reserve - New Vehicles			234	(31,911)	38	TOTAL LIABILITES (LINES 31 + 37)		471,143
TOTAL NEW VEHICLES (LINES 34 TO 38)	UNIT TOTAL	7		351,241	39	NET WORKING CAPITAL		
Used Vehicles - Genesis		-	239	-	40			
Used Vehicles - Other		-	240	-	41	ACTUAL $ 74,770 GUIDE 0 Actual % Guide 0.00%		
Memo: Used Over 30 Days	-	UNITS -			42	Net Working Capital = [(Assets Line 62) - (Liabilites Line 31)] + (Assets Lines 38, 43, 47)		
LIFO Reserve - Used Vehicles			235	-	43	EFFECTIVE NET WORTH		
Lease & Rental Units			287A	-	44			
Parts & Accessories - Genesis			242A	40,572	45	ACTUAL $ - GUIDE 0 Actual % Guide -		
Parts & Accessories - Other			242B	-	46	Effective Net Worth = [(Net Worth Line 80) + (50% Assets Lines 38, 43, 47)] - (Assets Lines 75 to 80)		
L.I.F.O. Reserve - P & A			251	-	47	NET WORTH		
Gas, Oil and Grease			244	-	48	CORPORATION ONLY TYPE S - C - LLC -		
Tires			244A	-	49	CAPITAL STOCK	360	-
Paint and Body Shop Materials			245	-	50	RETAINED EARNINGS	370	136,189
Sublet Repairs			246	-	51	DIVIDENDS	375	-
Work in Process - Labor			247	-	52	ADDITIONAL PAID IN CAPITAL	376	-
Other Inventory			248	-	53	TREASURY STOCK	377	-
Parts Inventory Adjustment			249	(16)	54	OTHER DISPURSEMENTS	378	-
Miscellaneous Inventories			243	-	55	PROPRIETOR OR PARTNER	LLP	-
TOTAL INVENTORIES (Lines 39 to 55)				391,797	56	INVESTMENTS	380	-
Prepaid Expenses:	Advertising		269	-	57			
	Taxes		270	-	58			
	Insurance		271	-	59	DRAWINGS	390	-
	Rent		272	-	60	NET INVESTMENTS (Lines 49+50-51+52-53-54+56-59)		136,189
	Interest / Other	- 273	274	-	61	UNITS SALES AND PROFIT SUMMARY		
TOT CURRENT ASSET (Lines 6+32+56+57 to 61)				514,002	62			
FIXED ASSETS - AUTO BUSINESS ONLY					63			

	ACCT NO	COST	ACCUM DEPC'N		LINE
LAND	280	-		-	65
BLDGS & IMPRVM	281 / 351	-	-	-	66
MACH & SHOP EQ	282 / 352	-	-	-	67
PARTS & ACCESS EQ	283 / 353	-	-	-	68
FURN & FIXTURES	284 / 354	16,615	24,708	(8,093)	69
COMPANY VEH	285 / 355	67,520	11,633	55,887	70
LEASEHOLDS	286 / 356	20,000	-	20,000	71
LEASE & RENTALS	287 / 357	-	-	-	72
TOTAL FIXED (Lines 62+73+75 to 80)		104,135	36,341	67,794	73
OTHER ASSETS					74
Deposits on Contracts			290	-	75
Life Insurance - Cash Value			291	-	76
Notes and Accounts Receivables - Officers & Owners			293	-	77
Advances to Employees, Affiliates and Others			294	-	78
Other Notes and Accounts Receivable			295	58,019	79
Intangibles, Other Investments & Miscellaneous Assets			296	-	80
TOTAL ASSETS (LINES 62+73+75 TO 80)				639,815	81

	NEW UNITS		USED UNITS		PROFIT OR (LOSS)
	GENESIS	OTHER	RETAIL	WHOLESA	
JAN	6	-	-	-	15,505
FEB	3	-	-	-	4,014
MAR	4	-	-	-	12,964
APR	-	-	-	-	-
MAY	-	-	-	-	-
JUN	-	-	-	-	-
JUL	-	-	-	-	-
AUG	-	-	-	-	-
SEP	-	-	-	-	-
OCT	-	-	-	-	-
NOV	-	-	-	-	-
DEC	-	-	-	-	-
TOT	13	-	-	-	32,483

Est. Bonuses (Page 2, lines 73+74 [YTD])	-	
Est.Incom Tax (Page 2, line 76 [YTD])	-	
NET PROFIT OR LOSS AFTER TAXES (Page 2, line 78 [YTD])	399	32,483
TOTAL NET WORTH (LINES 60 + 79)		168,672
TOTAL LIABILITES AND NET WORTH (LINES 38 + 80)		639,815

Ver 20.04.23

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement") is dated as of July 6, 2020, and is between **E.M. Stivers, Inc.**, a Missouri corporation ("Buyer"), and **Adamson Ford, LLC**, an Alabama limited liability company ("Seller").

Recitals:

WHEREAS, Seller is engaged in the operation of a Ford automobile dealership business (the "Dealership Business") located at 1922 2nd Avenue South, Birmingham, Alabama 35233 (such real property, as improved, hereinafter referred to as the "Dealership Premises"); and

WHEREAS, Seller is also engaged in the operation of a body shop business (the "Body Shop Business," and together with the Dealership Business, the "Businesses") located at 700 8th Street South, Birmingham, Alabama 35233 (such real property, as improved, hereinafter referred to as the "Body Shop Premises," and together with the Dealership Premises, the "Premises"); and

WHEREAS, Seller desires to sell, and Buyer desires to buy, either directly or through a business entity to which Buyer may assign its rights hereunder pursuant to Section 14.1, certain of the assets pertaining to the Businesses on the terms set forth in this Agreement; and

WHEREAS, concurrently with the execution of this Agreement, Buyer and Seller have entered into an escrow agreement (the "Escrow Agreement") with Land Title Company of Alabama (the "Escrow Agent"), and Buyer has deposited with the Escrow Agent the sum of Two Hundred Fifty Thousand Dollars ($250,000.00) (the "Escrow Deposit"), which amount will be credited to the total Purchase Price payable by Buyer to Seller hereunder at the Closing.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the receipt and legal sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

ARTICLE I
DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following capitalized terms, when used in this Agreement, have the following meanings:

(a) "Assets" means all of the following: the New Vehicles (as defined in Section 3.1); the Demo Vehicles (as defined in Section 3.2); the FCTP Vehicles (as defined in Section 3.3); the Used Vehicles (as defined in Section 3.4); the Parts (as defined in Section 4.2); the Oil and Grease (as defined in Section 4.3); the Miscellaneous Items (as defined in Section 4.4); the Body Shop Supplies (as defined in Section 4.5); the WIP (as defined in Section 5.1); the F&E (as defined in Section 5.2); the Other Assets (as defined in Section 5.3); and the respective goodwill of each of the Businesses.

(b) "Authority" means (i) any federal, state, or local government authority or body or (ii) any entity exercising executive, legislative, judicial, regulatory, or administrative functions of, or pertaining to, government.

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(c) "Business Day" means a day other than a Saturday, a Sunday, or a day on which banks are closed in the State of Alabama; all references in this Agreement to days that are not specifically references to Business Days will be deemed references to calendar days.

(d) "Closing" means the closing of the purchase and sale of the Assets pursuant to this Agreement, which the parties shall hold at the offices of the Dealership Business, or such other mutually agreed location in Birmingham, Alabama, beginning at 9:00 a.m. on the Closing Date; the Closing will be effective for all purposes as of the opening of business on the Closing Date.

(e) "Closing Date" means the date of the Closing, which will be a date, not later than the Closing Date Deadline, which date will be designated by Buyer and reasonably acceptable to Seller and will not be later than ten (10) Business Days after satisfaction of the conditions set forth in Sections 8.5 and 9.5, or such other date as is mutually agreed upon by the parties hereto.

(f) "Closing Date Deadline" means the date that is the 120th day after the date of this Agreement (not counting the date of this Agreement); provided, however, that Buyer and Seller may agree in writing to extend the Closing Date Deadline to a further date or dates; provided, further, that if the Closing Date Deadline (as the same may have been extended pursuant to the preceding sentence) falls on a day that is not a Business Day, the Closing Date Deadline will be deemed automatically extended to the first Business Day following such day upon which the Closing Date Deadline otherwise falls.

(g) "COVID-19" means the novel severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

(h) "COVID-19 Measures" means any quarantine, "shelter in place," "stay at home," "safer at home," workforce reduction, social distancing, shut down, closure, sequester, or any other law, order, proclamation, directive, guideline, or recommendation enacted, adopted, or issued by any Authority in connection with or in response to COVID-19.

(i) "Liens" means any of the following, in each case whether the same is consensual or nonconsensual or arising by operation of law, legal process, or otherwise: (i) any mortgage, lien, security interest, pledge, attachment, levy, or other charge or encumbrance on or with respect to any property or asset (or any revenue, income, or profits proceeding or arising therefrom); (ii) any arrangement under which any property or asset is transferred, sequestered, or otherwise identified with the intention of subjecting the same to, or making the same available for, the payment or performance of any liability in priority to the payment of the ordinary, unsecured creditors of the owner of such property or asset; or (iii) any conditional sale agreement, capital lease, or other title retention agreement that places any kind of restriction on the ownership or use of any property or asset.

(j) "Manufacturer" means Ford Motor Company.

(k) "Real Estate Leases" means (i) that certain lease between Leo Kayser, III, and Deborah Strauss, individually and as Trustees of the J. Lois Kayser Marital Trust, as lessor, and Seller, as lessee, relating to 1927 1st Avenue South, Birmingham, AL 35203, and (ii) that certain lease between John H. Lavette and Mary Elizabeth Mullins Lavette, as lessor, and Seller, as lessee, relating to 110 20th Street South, Birmingham, AL 35203.

(l) "Taxes" means all foreign, federal, state, local, or other net or gross income, gross receipts, sales, use, lease, transfer, ad valorem, property, value-added, capital stock, franchise, privilege, production, severance, withholding, payroll, employment, excise, or similar taxes, assessments, duties, fees, levies, or other governmental charges, together with any interest thereon, any penalties,

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additions to tax or additional amounts with respect thereto and any interest in respect of such penalties, additions, or additional amounts.

ARTICLE II
SALE AND PURCHASE OF THE ASSETS

2.1 Sale and Purchase. Subject to the terms set forth in this Agreement, at the Closing, Seller shall sell, transfer, and convey the Assets to Buyer, and Buyer shall purchase and acquire the Assets from Seller, for the consideration contained in this Agreement. Seller shall effectuate the sale, transfer, and conveyance of the Assets by execution and delivery at the Closing of a bill of sale in a form reasonably acceptable to Buyer and Seller (the "Bill of Sale") and such other instruments of assignment, transfer, and conveyance as Buyer may reasonably request.

2.2 Purchase Price. For and in consideration of the Assets, Buyer shall pay to Seller, at the time and in the manner provided hereinbelow, an aggregate purchase price (the "Purchase Price") equal to the following:

(a) Two Million Five Hundred Ninety-Five Thousand Dollars ($2,595,000.00), as the purchase price for the goodwill of the Business (the "Goodwill Purchase Price"), plus

(b) the New Vehicle Purchase Price (as defined in Section 3.1); plus

(c) the Demo Vehicle Purchase Price (as defined in Section 3.2); plus

(d) the FCTP Vehicle Purchase Price (as defined in Section 3.3); plus

(e) the Used Vehicle Purchase Price (as defined in Section 3.4); plus

(f) the Parts Purchase Price (as defined in Section 4.2); plus

(g) the Oil and Grease Purchase Price (as defined in Section 4.3); plus

(h) the Miscellaneous Items Purchase Price (as defined in Section 4.4); plus

(i) the Body Shop Supplies Purchase Price (as defined in Section 4.5); plus

(j) the WIP Purchase Price (as defined in Section 5.1); plus

(k) the F&E Purchase Price (as defined in Section 5.2); plus

(l) the Other Assets Purchase Price (as defined in Section 5.3).

2.3 Payment of Purchase Price. Subject to the terms hereinafter set forth, at the Closing:

(a) Buyer and Seller shall deliver joint written instructions to the Escrow Agent to disburse the Escrow Deposit to Seller; and

(b) Buyer shall deliver to Seller, by wire transfer to an account designated by Seller (such designation to be made by Seller at least one Business Day prior to the Closing Date), an amount equal to the Purchase Price less the Escrow Deposit (such aggregate amount, the "Closing Payment").

2.4 Allocation of Purchase Price. Each party shall use the Purchase Price allocation described in Section 2.2, above, in all reporting to, and tax returns filed with, the Internal Revenue Service and other state and local taxing authorities; provided, however, Buyer and Seller may reallocate the Purchase Price among the Assets if they so desire provided they do so in a writing signed by both

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parties. At the Closing, Buyer and Seller shall advise each other in writing of their respective Federal Tax Identification Numbers.

2.5 Excluded Assets. Notwithstanding anything to the contrary contained in Section 2.1 or elsewhere in this Agreement, Buyer shall not purchase or acquire, and Seller shall retain and not sell or convey, any of Seller's property and assets not specifically described in Section 2.1 as "Assets" (collectively, the "Excluded Assets"), including, but not limited to, the following:

(a) Seller's cash on hand or on deposit in checking, money market, or other accounts, cash equivalents, and investments, including, but not limited to, the balance of funds in Seller's cash management account with Manufacturer;

(b) all of Seller's finance contracts, marketable securities, notes receivable, and accounts receivable with respect to the Businesses as of the Closing, including, but not limited to, W&P claims, vehicle holdbacks, incentives, jobber incentives, ESP, floor plan assistance, finance, and other receivables;

(c) all of Seller's deposits, prepaid rents, rebate commissions, and cash back bonuses, except customer deposits related to Assumed Contracts, if any;

(d) all of Seller's financial records and minute books and other organizational records;

(e) all of Seller's insurance policies and rights thereunder, and all insurance proceeds related thereto;

(f) all of Seller's personnel records and other records that Seller is required by law to retain in its possession, provided that Seller will provide copies of personnel records to Buyer, at Buyer's cost, if requested by Buyer and allowed by law;

(g) all claims for refund of Taxes and other governmental charges of whatsoever nature, all prepaid or estimated Taxes and all deposits of Taxes, including, but not limited to, estimated sales taxes paid pursuant to section 40-23-7 of the *Code of Alabama* (1975), as amended), in each case, however, limited to Taxes and other charges that were originally paid by Seller;

(h) all rights in connection with and assets of any employee benefit plan of Seller;

(i) all rights of Seller under this Agreement and under all other instruments, documents, and agreements executed or to be executed in connection herewith;

(j) all employee retirement, compensation, or benefit plans of Seller;

(k) all of Seller's leasehold and building improvements;

(l) all signs bearing Seller's trade name;

(m) all of Seller's equipment and hardware that is a part of, or related to, Seller's DMS system and that cannot be used with any other DMS system (this exclusion does not include personal computers, monitors, and general printers, which buyer shall purchase from Seller hereunder); and

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(n) the assets of Seller listed on Schedule 2.5.

2.6 Leases.

(a) At the Closing, Buyer shall execute and deliver, and Seller shall cause Asland Investment Co., LLC, an Alabama limited liability company ("Landlord") to execute and deliver, a Lease Agreement in form and substance acceptable to Buyer and Landlord (the "Dealership Lease"), pursuant to which Buyer will lease the Dealership Premises for a term of three (3) years at the rent (triple net) of Forty Thousand Dollars ($40,000) per month for the first year, Forty-Four Thousand Dollars ($44,000) per month for the second year, and Forty-Eight Thousand ($48,000) per month for the third year. In connection therewith, Buyer shall use its best efforts to relocate operations at the Dealership Premises as soon as reasonably possible and shall have the option to terminate the Dealership Lease upon its relocation of the same to a location mutually acceptable to Buyer and Manufacturer by giving sixty (60) days' prior written notice to the Landlord.

(b) At the Closing, Buyer shall execute and deliver, and Seller shall cause Landlord to execute and deliver, a Lease Agreement in form and substance acceptable to Buyer and Landlord (the "Body Shop Lease," and together with the Dealership Lease, the "Operating Leases"), pursuant to which Buyer will lease the Body Shop Premises for a term of three (3) years (with an option in favor of Buyer to extend the initial term an additional two (2) years) at the rent (triple net) of Twelve Thousand Dollars ($12,000) per month for the first year, Thirteen Thousand Two Hundred Dollars ($13,200) per month for the second year, and Fourteen Thousand Four Hundred Dollars ($14,400) for the third through fifth years. The Body Shop Lease will also grant to Buyer the option to terminate the Body Shop Lease at any time during the term of the same by giving sixty (60) days' prior written notice to Landlord.

(c) The Operating Leases described in sub-paragraphs (a) and (b), above, shall contain provisions whereby Landlord indemnifies Buyer from and against environmental liabilities with respect to the Premises existing or arising prior to the execution date thereof, the exact terms of which must be agreed upon by Landlord and Buyer. The Operating Leases shall also provide that Buyer is responsible for all occupancy expenses (other than expenses for roof and HVAC repairs and replacement, which Buyer and Landlord shall split equally) and shall otherwise contain reasonably standard terms and conditions that one might find in a like commercial real property lease.

(d) At the Closing, Buyer and Seller shall execute and deliver a separate Assignment and Assumption of Lease Agreement in form and substance acceptable to Buyer and Seller, pursuant to which each Real Estate Lease will be assigned to, and assumed by, Buyer at the Closing (each, a "Real Estate Lease Assignment," and together the "Real Estate Lease Assignments"). Simultaneously with the execution and delivery of the same, Seller shall cause the landlord under each of the Real Estate Leases to give its written consent to the same in form and substance reasonably acceptable to Buyer and Seller.

2.7 Assignment and Assumption of Certain Liabilities; No Other Assumption. At the Closing, Seller shall assign to Buyer, and Buyer shall assume and agree to perform and discharge, the Assumed Contracts (as defined in Section 10.3) pursuant to an assignment and assumption agreement in form and substance reasonably acceptable to Buyer and Seller (the "Assumption Agreement"). Notwithstanding anything contained in this Agreement, except with respect to Buyer's assumption of the Assumed Contracts (as provided in the preceding sentence), the Real Estate Leases (as provided in Section 2.6), the Unfilled Sales Orders (as provided in Section 3.1), and the WIP (as provided in Section 5.1), Buyer is not assuming or agreeing to pay, perform, fulfill, or discharge, and is not to be held liable or responsible, for any of Seller's debts, liabilities, or obligations, whether such debts, liabilities, or obligations relate to payment, performance, or otherwise or are known or unknown, asserted or

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unasserted, absolute or contingent, accrued or unaccrued, matured or unmatured, liquidated or unliquidated, and due or to become due. The Assumed Contracts, Real Estate Leases, Unfilled Sales Orders, and WIP are hereinafter referred to collectively as the "Assumed Liabilities."

2.8 EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER UNDERSTANDS AND AGREES THAT BUYER IS ACQUIRING THE ASSETS AS IS, WHERE IS, AND WITH ALL FAULTS. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH HEREIN, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE REGARDING THE ASSETS, ANY PROPERTIES (WHETHER OWNED OR LEASED), THE LIABILITIES, THE BUSINESSES, OR OTHERWISE, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE III
NEW VEHICLES, DEMONSTRATORS AND USED VEHICLES

3.1 New Vehicles. At the Closing, Buyer shall purchase all of Seller's 2019 and newer new motor vehicles that are (i) in Seller's stock in the Dealership Business and unsold as of the Closing Date, (ii) have not been retail delivery reported or titled, and (iii) are listed by Seller on Schedule 3.1, which Schedule Seller shall deliver to Buyer prior to the Closing (collectively, the "New Vehicles" and, individually, a "New Vehicle"); provided, however, that any New Vehicle with more than 500 miles on its odometer as of the Closing Date will be treated by the parties as a Demo Vehicle rather than as a New Vehicle and sold by Seller to Buyer pursuant to Section 3.2. The purchase price to be paid by Buyer for each New Vehicle will be calculated as follows: (i) Manufacturer's invoice price for such vehicle, including the Manufacturer charges for freight and handling, plus (ii) the wholesale cost to Seller of all "add-on" parts or accessory items (installed consistent with Seller's past practices, but specifically excluding reconditioning charges and soft adds such as etch, leather treatment, undercoating's, paint sealants, etc.), less (iii) dealer holdback, if previously paid to Seller, floorplan assistance (in transit and supplemental) advertising or marketing allowance, if paid to Seller, finance cost allowance and any dealer cash/rebates or carryover allowances, and any other dealer factory incentives with respect to such vehicles and for which Seller has previously been paid or for which a payment or other credit has accrued and will benefit Seller on and after the date of closing, less (iv) a credit in favor of Buyer equal to the value of any Manufacturer installed accessories removed or missing from a vehicle, valued at cost reflected on such vehicles invoice, less (v) the amount of any PDI payment received from the Manufacturer but for which no PDI activity has been performed on such vehicle, and less (vi), with respect to any vehicle that has damage greater than $2,500 and that has been repaired, the parties shall mutually agree to a reasonable impairment of value to the vehicle prior to Closing, and less (vii), with respect to any vehicle that has damage greater than $2,500 and that is in the process of repair, the parties shall mutually agree to a reasonable amount for the repair of the vehicle and a reasonable impairment of value to the vehicle prior to Closing (the sum of all such amounts to be paid for New Vehicles as determined by this Section is herein referred to as the "New Vehicle Purchase Price"). Seller shall set forth on Schedule 3.1 each New Vehicle's model, invoice cost, odometer reading, and all other information necessary to calculate the New Vehicle Purchase Price with respect to such New Vehicle. At the Closing, Seller shall also assign to Buyer, without any additional consideration therefor, by appropriate documents reasonably satisfactory to Buyer, all unfilled retail orders and deposits made thereon respecting the sale of New Vehicles, and Buyer hereby agrees to fill such orders (collectively, the "Unfilled Retail Orders").

3.2 Demo Vehicles. At the Closing, Buyer shall purchase all of Seller's 2019 and newer new motor vehicles that are (i) in Seller's stock in the Dealership Business and unsold as of the Closing Date,

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(ii) have not been retail delivery reported or titled, (iii) have been, or are currently being used, by Buyer in the ordinary course of Buyer's business for the purpose of demonstration or are expressly regarded by a related section of this Agreement to be considered a "Demo Vehicle" herein, and (iv) are listed by Seller on Schedule 3.2, which Schedule Seller shall deliver to Buyer prior to the Closing (collectively, the "Demo Vehicles" and, individually, a "Demo Vehicle"); provided, however, that any Demo Vehicle with more than 5,999 miles on its odometer as of the Closing Date will be treated by the parties as a Used Vehicle rather than as a Demo Vehicle and sold by Seller to Buyer pursuant to Section 3.4. The purchase price to be paid by Buyer for each Demo Vehicle is such vehicle's New Vehicle Purchase Price (as determined under Section 3.1 as if such vehicle was being purchased a New Vehicle hereunder), less 35 cents per mile as showing on the odometer of such Demo Vehicle (the sum of all such amounts to be paid for Demo Vehicles as determined by this Section is herein referred to as the "Demo Vehicle Purchase Price"). Seller shall set forth on Schedule 3.2 each Demo Vehicle's model, invoice cost, odometer reading, and all other information necessary to calculate the Demo Vehicle Purchase Price with respect to such Demo Vehicle.

3.3 FCTP Vehicles. At the Closing, Buyer shall purchase all of Seller's 2019 and newer motor vehicles that (i) are in Seller's stock in the Dealership Business and unsold as of the Closing Date, (ii) have not been retail delivery reported or titled, (iii) have been at any time in the past, or are at Closing, placed in the Manufacturer's Courtesy Transportation Program, and (iv) are listed by Seller on Schedule 3.3, which Schedule Seller shall deliver to Buyer prior to the Closing (collectively, the "FCTP Vehicles" and, individually, a "FCTP Vehicle"). The purchase price to be paid by Buyer for each FCTP Vehicle will be calculated as follows (the sum of all such amounts to be paid for FCTP Vehicles as determined by this Section is herein referred to as the "FCTP Vehicle Purchase Price"):

(a) For all FCTP Vehicles that Seller has in-service as of the Closing, Buyer shall purchase each of the same from Seller at each vehicle's New Vehicle Purchase Price (as determined under Section 3.1 as if such vehicle was being purchased as a New Vehicle hereunder), less (i) 35 cents for each mile on the odometer of such FCTP Vehicle that is in excess of 500 miles, less (ii) the FCTP "incentive" paid to Seller at the time such vehicle was placed in service, and less (iii) the administrative allowances paid while such vehicle is in service; and

(b) For all FCTP Vehicles that Seller has out-of-service as of the Closing, Buyer shall purchase each of the same from Seller according to the same price calculation that is set forth in paragraph (a) of this Section 3.3, provided such vehicle has not been reported as a "U sale" or had "FCTP out" incentives paid, or new vehicle end user incentives paid; and

(c) For all FCTP Vehicles for which the "FCTP out" incentives have been claimed and received and that are no longer eligible for new car incentives and are now used vehicles, Buyer shall purchase each of the same from Seller as a Used Vehicle under Section 3.4, except that the 90 day in stock provision contained in Section 3.4 will not apply to exclude the purchase of any such FCTP Vehicle.

Seller shall set forth on Schedule 3.3 each FCTP Vehicle's model, invoice cost, odometer reading, and all other information necessary to calculate the FCTP Vehicle Purchase Price with respect to such FCTP Vehicle.

3.4 Used Vehicles. At the Closing, Buyer shall purchase all other motor vehicles of Seller that (i) are in Seller's stock in the Dealership Business less than ninety (90) days (as measured from the Closing Date) and unsold as of the Closing Date, (ii) are not New Vehicles, Demo Vehicles, FCTP Vehicles, or Company Vehicles (as defined in Section 5.2), and (iii) are listed by Seller on Schedule 3.4, which Schedule Seller shall deliver to Buyer prior to the Closing (collectively, the "Used Vehicles" and,

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individually, a "Used Vehicle"). The purchase price to be paid by Buyer for each Used Vehicle is equal to Seller's actual cost (acquisition cost plus reconditioning costs) of such vehicle less any posted used car add-on packs or accruals for gas, detail, warranties, and other costs associated with the sale of such vehicle, up to a maximum of such vehicle's NADA clean trade-in value (the sum of all such amounts to be paid for Used Vehicles as determined by this Section is herein referred to as the "Used Vehicle Purchase Price"). Seller shall set forth on Schedule 3.4 each Used Vehicle's model, cost, odometer reading, and all other information necessary to calculate the Used Vehicle Purchase Price with respect to such Used Vehicle.

ARTICLE IV
PARTS; OIL AND GREASE; MISCELLANEOUS ITEMS; BODY SHOP PAINT AND SUPPLIES

4.1 Inventory. No earlier than three (3) Business Days before the Closing (said date, the "Inventory Date"), Buyer and Seller shall engage a mutually acceptable third party engaged in the business of appraising, valuing and preparing inventories for automobile dealerships (the "Inventory Agent") to prepare an inventory list (the "Inventory") of the Parts (as defined in Section 4.2), the Oil and Grease (as defined in Section 4.3), and the Miscellaneous Items (as defined in Section 4.4) used by Seller in the Dealership Business. The Inventory will identify each Part separately and list its individual purchase price (as such purchase price is determined pursuant to Section 4.2) and will also identify whether each Part is new or used and the length of time such Part has been in inventory. The Inventory will also identify the Oil and Grease and Miscellaneous Items and list their respective purchase prices (as such purchase prices are determined pursuant to Section 4.3 and Section 4.4., respectively). Seller shall post the Inventory (insofar as it relates to Parts) to the Manufacturer's approved system of inventory control, to show each item extended by its unit price. Buyer and Seller shall each pay one-half of the cost of the Inventory. Buyer and Seller shall cause the Inventory to be completed by the Inventory Date.

4.2 Parts. At the Closing, Buyer shall purchase all parts and accessories owned by Seller at the Closing Date and used in the Businesses that (i) are new, unopened, and undamaged, (ii) are originally acquired by Seller from the Manufacturer or a Motorcraft Jobber, and (iii) are listed in the Inventory (collectively, the "Parts" and, individually, a "Part"). The purchase price to be paid by Buyer for each Part is the wholesale price listed for such Part in the Master Price List (as defined herein), as reflected on the Inventory (the sum of all such amounts to be paid for the Parts as determined by this Section is herein referred to as the "Parts Purchase Price"). For purposes of this Agreement, "Master Price List" means the latest current Master Parts Price List Suggested List Prices and Dealer Prices of the Manufacturer, or other applicable similar price lists, of the Manufacturer, with supplements or the equivalent in effect as of the Inventory Date.

4.3 Oil and Grease. At the Closing, Buyer shall purchase all oil, gas, and grease owned by Seller that (i) are on the Premises at the Closing Date and used in the Businesses and (ii) are identified in the Inventory (collectively, the "Oil and Grease"). The purchase price to be paid by Buyer for the Oil and Grease is Seller's verifiable cost therefor, as reflected on the Inventory (the amount to be paid for the Oil and Grease as determined by this Section is herein referred to as the "Oil and Grease Purchase Price").

4.4 Miscellaneous Items. At the Closing, Buyer shall purchase all other miscellaneous parts, accessories, inventories, articles (including tires), and supplies owned by Seller that (i) are on the Premises at the Closing Date and used in the Businesses, (ii) are not Body Shop Supplies (as defined in Section 4.5, below), and (iii) are identified in the Inventory (collectively, the "Miscellaneous Items"). The purchase price to be paid by Buyer for the Miscellaneous Items is Seller's verifiable cost therefor, as

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reflected on the Inventory (the sum of all such amounts to be paid for the Miscellaneous Items as determined by this Section is herein referred to as the "Miscellaneous Items Purchase Price").

4.5 Body Shop Paint and Supplies. At the Closing, Buyer shall purchase all paint, primer, base coat products, clear coat products, and other supplies that (i) Seller has on hand at the Body Shop Premises as of the Closing Date and is using in the Body Shop Business (collectively, the "Body Shop Supplies"). Prior to the Closing, Buyer shall engage Seller's body shop paint and supply vendor(s), at Buyer's sole expense, to inventory and weigh or measure all of Seller's Body Shop Supplies on hand at that time and to provide a current on hand value of the same. The purchase price to be paid by Buyer for the Body Shop Supplies is the aggregate on hand value of the same as determined by such vendor(s) (the sum of all such amounts to be paid for the Body Shop Supplies as determined by this Section is herein referred to as the "Body Shop Supplies Purchase Price").

ARTICLE V
WORK IN PROGRESS; FIXTURES AND EQUIPMENT; OTHER ASSETS

5.1 Work in Progress. At the Closing, Buyer shall purchase, at Seller's net cost of installed parts and completed labor, such shop labor and sublet repairs as Seller has caused to be performed on any repair orders that are in process at the opening of business on the Closing Date with respect to the Dealership Business and the Body Shop Business (the "WIP") (the sum of all costs of Seller for the WIP pursuant to the terms of this Section 5.1 is referred to herein as the "WIP Purchase Price"). Buyer shall complete such repair work and will be entitled to the entire proceeds to be collected for such services. Notwithstanding the foregoing, Buyer is not assuming under this Agreement any "we owes" or similar promises or guarantees of Seller to any customers, and Seller is solely responsible for resolving the same with existing customers.

5.2 Fixtures and Equipment. At the Closing, Buyer shall purchase all furniture, furnishings, required special tools, equipment, fixtures, lifts, signs, vehicles used by Seller to operate the Businesses (the "Company Vehicles"), and similar tangible assets owned by Seller relating to the Businesses (collectively, the "F&E"). The purchase price to be paid by Buyer for each item of F&E is equal to Seller's depreciated book value for such item as of the last day of the month immediately preceding the Closing Date (the sum of all values assigned to the F&E pursuant to the terms of this Section is herein referred to as the "F&E Purchase Price").

5.3 Other Assets. At the Closing, Buyer shall purchase all of the following assets owned by Seller that are used in connection with the Businesses: (a) unused shop repair orders, parts sales tickets, accounting forms, binders, office and shop supplies and shop reference manuals and parts reference catalogs; (b) product sales training material and reference books on hand as of the Closing Date; (c) customer and registration lists pertaining to the sale of motor vehicles, service files, repair orders, owner follow-up lists and similar records; (d) telephone numbers and listings used by Seller; (e) internet websites, URLs, and social media accounts; (f) all current and prospective customer lists; and (g) all other intangible assets of Seller used in connection with the Businesses (such items collectively referred to herein as the "Other Assets"). The purchase price to be paid by Buyer for the Other Assets is Five Thousand Dollars ($5,000.00) (the "Other Assets Purchase Price"),

5.4 No Warranty Obligations of Seller. Seller acknowledges that Buyer is not assuming any obligations under any warranties issued by Seller on any vehicles sold, serviced, or repaired by Seller with respect to the Businesses prior to the Closing Date.

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5.5 Accounts Receivable. Seller shall retain all accounts receivable held by Seller with respect to the Businesses as of the Closing, and Buyer shall retain all accounts receivable arising out of sales and/or services of the Businesses after the Closing. Neither Buyer nor Seller has any responsibilities or obligations with respect to the documentation or collection of the other party's accounts receivable.

ARTICLE VI
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows:

6.1 Organization; Power and Authority; Authorization. Buyer is a corporation, duly incorporated, validly existing and in good standing under the laws of the State of Missouri and has full power and authority to perform its obligations under this Agreement and all other agreements executed or to be executed in connection herewith. If Buyer assigns any part of its rights hereunder to another entity pursuant to Section 14.1, that entity will be duly organized, validly existing, and in good standing under the laws of its state of organization, and shall have full power and authority to perform its obligations under this Agreement and all other agreements executed or to be executed in connection herewith. This Agreement, and all other agreements, certificates, and documents executed or to be executed by Buyer in connection herewith, constitute or, when executed and delivered, will be duly authorized and will constitute legal, valid, and binding agreements of Buyer enforceable against Buyer in accordance with their respective terms.

6.2 Non-Violation; Consents. The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement, and the compliance with the provisions hereof do not and will not: (a) conflict with or violate any of the provisions of Buyer's incorporation documents; (b) violate any material law, ordinance, rule or regulation, or any judgment, order, writ, injunction or decree, or similar command of any court, administrative or governmental agency, or other body applicable to Buyer; (c) violate or conflict with or result in a breach of, or constitute a default under, any material instrument, agreement or indenture, or any mortgage, deed of trust, or similar contract to which Buyer is a party or by which Buyer is bound or affected; or (d) require the consent, authorization, or approval of, or notice to, or filing or registration with, any Authority, or any other third party.

6.3 Litigation. There are no actions, suits, or proceedings pending, or, to the knowledge of Buyer, threatened against or affecting Buyer that might adversely affect the power or authority of Buyer to carry out the transactions to be performed by it hereunder.

6.4 Brokers and Finders. Buyer has not engaged any broker or any other person or entity who would be entitled to any brokerage commission or finder's fee in respect of the execution of this Agreement and/or the consummation of the transactions contemplated hereby.

6.5 Concerning the Manufacturer. Buyer is not aware of any facts or circumstances that could reasonably be expected to be the basis for Manufacturer not to approve Buyer as an authorized dealer.

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ARTICLE VII
REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer as follows:

7.1 Organization; Power and Authority; Authorization. Seller is a limited liability company duly formed, validly existing, and in good standing under the laws of the State of Alabama and has full limited liability company power and authority to own or use the properties it purports to own and use and to carry on its business as now being conducted. Seller has full limited liability company power and authority to execute and deliver this Agreement and all other agreements, certificates, and documents executed or to be executed by Seller in connection herewith, to consummate the transactions contemplated hereby and thereby, and to perform its obligations hereunder and thereunder. This Agreement, and all other agreements, certificates, and documents executed or to be executed by Seller in connection herewith, constitute or, when executed and delivered, will constitute legal, valid, and binding agreements of Seller enforceable against Seller in accordance with their respective terms.

7.2 Non-Violation; Consents. The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement, and the compliance with the provisions hereof do not and will not: (a) conflict with or violate any of the provisions of Seller's organizational documents; (b) violate any material law, ordinance, rule, or regulation or any judgment, order, writ, injunction, or decree or similar command of any court, administrative or governmental agency, or other body applicable to Seller, the Assets, the Businesses, or the Assumed Contracts; (c) result in the creation or imposition of any Lien upon any of the Assets; or (d) require the consent, authorization or approval of, or notice to, or filing or registration with, any Authority, or any other third party.

7.3 Actions, Suits, or Proceedings. There are no actions, suits, or proceedings pending or threatened that relate to Seller, the Businesses, or the Assets and, to the knowledge of Seller, no basis for any such action, suit, or proceeding exists, nor is there any legal impediment of which Seller has knowledge to the continued operation of the Businesses and the Assets in the ordinary course, except as required to comply with any COVID-19 Measures enacted, adopted, or issued by any Authority and except for any action taken or not taken by Seller to respond to COVID-19 or any COVID-19 Measures.

7.4 Title to Assets. Except as set forth on Schedule 7.4, Seller has good title to the Assets, free and clear of all Liens, except for liens for ad valorem personal property taxes not yet due and payable. All of the Assets to be transferred hereunder will be transferred at the Closing free and clear of all Liens.

7.5 Compliance with Laws. Seller has been and continues to be in compliance in all material respects with all laws to which Seller is subject or that are applicable to the Businesses or the Assets, and Seller has not received, or has had any employee receive, any notice from any Authority that asserts, or raises the possibility of assertion of, any noncompliance with any law and, to the knowledge of Seller, no condition exists that would provide a valid basis for any such assertion.

7.6 Taxes. Seller has caused to be duly filed in a timely manner with all appropriate taxing Authorities all returns for Taxes required to be filed by or with respect to the Businesses or the Assets, and all such tax returns were at the time of filing, and continue to be, true, correct, and complete in all respects. Seller has caused to be paid or deposited all Taxes required to be paid with respect to the periods covered by such tax returns (whether or not shown on such tax returns) or any taxing Authority. All Taxes required to be collected or withheld with respect to the Businesses or the Assets have been duly

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collected or withheld. No Liens with respect to Taxes exist, and Seller has no reason to expect that any Lien with respect to Taxes will arise on or with respect to the Businesses or the Assets.

7.7 Insurance Policies. Seller maintains policies of insurance on the Assets and the Businesses to be sold hereunder with extended coverage and in respect of the products and services provided or performed by Seller in amounts deemed by its management to be sufficient. Valid policies in such amounts are outstanding and duly in force.

7.8 Employee Matters.

(a) No later than thirty-five (35) days from the date of this Agreement, Seller shall furnish to Buyer an accurate and complete list of the names, titles, and 2019 and 2020 annualized cash compensation of all employees of Seller that Seller employs exclusively in connection with the Businesses, plus copies of all pay plans that Seller uses to pay its employees.

(b) Except as set forth on Schedule 7.8, Seller is not a party to any written or oral employment agreements or other compensation plans of any kind with respect to the Businesses. Seller has not engaged in any unfair labor practice or discriminated in its employment conditions or practices in connection with the Businesses. There are no unfair labor practice charges or complaints or discrimination charges or complaints pending or threatened against Seller with respect to the Businesses before any Authority (nor does any valid basis therefor exist) or existing or threatened labor strikes, disputes, grievances, controversies, or other labor troubles affecting the Businesses (nor does any valid basis therefor exist). Seller is not a party to or bound by any agreement with any union, labor organization, or collective bargaining unit with respect to the Businesses, and no employees of Seller employed in connection with the Businesses are represented by any union, labor organization, or collective bargaining unit. All employees of Seller employed in connection with the Businesses are citizens of, or are authorized in accordance with federal immigration laws to be employed in, the United States.

7.9 Employee Benefits. No later than thirty-five (35) days from the date of this Agreement, Seller shall furnish to Buyer a list of all employee benefit plans to which Seller currently contributes, or otherwise maintains, or to which it contributed in the past five (5) years, or maintained in the past five (5) years, with respect to the Businesses. On and after the Closing Date, Buyer will not have any liabilities (whether actual, potential, or contingent) with respect to each such plan.

7.10 Brokers and Finders. Seller has not engaged any broker or any other person or entity who would be entitled to any brokerage commission or finder's fee in respect of the execution of this Agreement and/or the consummation of the transactions contemplated hereby.

ARTICLE VIII
CONDITIONS PRECEDENT TO BUYER'S OBLIGATIONS

The obligations of Buyer to perform this Agreement at the Closing are subject to the following conditions precedent, which must be fully satisfied at or before the Closing, unless waived in writing by Buyer.

8.1 Representations and Warranties. All of the representations and warranties of Seller herein contained must be true and correct in all material respects on and as of the Closing Date as if made on and as of the Closing Date, and Buyer must have received a certificate from Seller, dated the Closing Date, to such effect.

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8.2 Compliance with Agreements. Each of the agreements or obligations required by this Agreement to be performed or complied with by Seller at or before the Closing must have been duly performed or complied with in all material respects, and Buyer must have received a certificate from Seller, dated the Closing Date, to such effect.

8.3 No Litigation. No action, suit, or proceeding must have been instituted by an Authority or any other third party to prohibit or restrain the sale contemplated by this Agreement or otherwise challenge the power and authority of the parties to enter into this Agreement or to carry out their obligations hereunder or the legality or validity of the sale contemplated by this Agreement.

8.4 Organization and Existence; Authorization. Seller must have furnished to Buyer (a) evidence to the reasonable satisfaction of Buyer with respect to the organization and existence of Seller and Landlord; and (b) a copy of duly adopted resolutions of the members and the managers of each of Seller and Landlord authorizing the execution and delivery of this Agreement and the Operating Leases and the consummation of the transactions contemplated hereby, certified by each of Seller and Landlord as of the Closing Date.

8.5 Manufacturer Approval. Manufacturer must have approved the transfer of the Dealership Business to Buyer and must have approved Buyer as an authorized dealer at the Dealership Premises.

8.6 Consents and Approvals. Buyer and Seller must have made or obtained all requisite governmental filings, consents, or approvals as are required to consummate the transactions contemplated hereby.

8.7 Bill of Sale, Etc. Seller must have executed, as appropriate, and delivered to Buyer the Bill of Sale, other documents of transfer of title contemplated hereby and any and all other documents necessary or desirable in connection with the transfer of the Assets, which documents must in all respects be in such form as may be reasonably required by Buyer.

8.8 Operating Leases. Seller must have caused Landlord to execute and deliver both Operating Leases, in form and substance reasonably acceptable to Buyer.

8.9 Assignment of Real Estate Leases. Seller must have executed and delivered both Real Estate Lease Assignments, and each landlord under each lease underlying the same must have consented to its respective Real Estate Lease Assignment, all in form and substance reasonably acceptable to Buyer.

8.10 Financing. Buyer must have obtained financing from one or more lending institutions for the purchase of the Assets on terms satisfactory to Buyer; provided, however, that this condition is effective only for the first 30 days from the date hereof, and if Buyer has not notified Seller in writing within such 30 day period that Buyer has not obtained such financing, then this condition expires and is of no further force and effect at the end of such 30 day period.

ARTICLE IX
CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER

The obligations of Seller to perform this Agreement at Closing are subject to the following conditions precedent, which must be fully satisfied at or before the Closing, unless waived in writing by Seller:

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9.1 Representations and Warranties. All of the representations and warranties of Buyer herein contained must be true and correct in all material respects on and as of the Closing Date as if made on and as of the Closing Date, and Seller must have received a certificate from Buyer, dated the Closing Date, to such effect.

9.2 Compliance with Agreements. Each of the agreements or obligations required by this Agreement to be performed or complied with by Buyer at or before the Closing must have been duly performed or complied with in all material respects, and Seller must have received a certificate from Buyer, dated the Closing Date, to such effect.

9.3 No Litigation. No action, suit, or proceeding must have been instituted by a governmental agency or any third party to prohibit or restrain the sale contemplated by this Agreement or otherwise challenge the power and authority of the parties to enter into this Agreement or to carry out their obligations hereunder or the legality or validity of the sale contemplated by this Agreement.

9.4 Incorporation and Existence; Authorization. Buyer must have furnished to Seller (a) evidence to the reasonable satisfaction of Seller with respect to the incorporation and existence of Buyer and (b) a copy of the resolutions duly adopted by the shareholders and directors of Buyer authorizing the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, certified by Buyer as of the Closing Date.

9.5 Manufacturer Approval. Manufacturer must have approved the transfer of the Dealership Business to Buyer and must have approved Buyer as an authorized dealer at the Dealership Premises.

9.6 Consents and Approvals. Buyer and Seller must have made or obtained all requisite governmental filings, consents, or approvals as are required to consummate the transactions contemplated hereby.

9.7 Payment of Closing Payment; Assumption Agreement. Buyer must have tendered to Seller the Closing Payment and must have executed and delivered the Assumption Agreement.

9.8 Operating Leases. Buyer must have executed and delivered both Operating Leases, in form and substance reasonably acceptable to Seller.

9.9 Assignment of Real Estate Leases. Buyer must have executed and delivered both Real Estate Lease Assignments, and each landlord under each lease underlying the same must have consented to its respective Real Estate Lease Assignment, all in form and substance reasonably acceptable to Seller.

ARTICLE X
COVENANTS AND AGREEMENTS

10.1 Regarding the Manufacturer. Promptly after the day on which Seller receives notice from the Escrow Agent that the Earnest Money has been received into escrow in accordance with the Escrow Agreement, Seller shall notify Manufacturer regarding the transactions contemplated by this Agreement, and, upon receipt from Manufacturer of an application package, Buyer shall, not later than fourteen (14) days from the date of receipt of the same from the Manufacturer, file its application with the Manufacturer for the issuance of a franchise to operate an automobile dealership at the Dealership Premises only. Buyer and Seller shall use commercially reasonable best efforts to obtain Manufacturer

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approval as soon as possible. In connection with all such communications with the Manufacturer, Buyer and Seller shall request that Manufacturer not release to any third party the substance of such communications or the fact that such communications have or are taking place. For avoidance of doubt, Buyer's application to the Manufacturer will not be tied to any real estate other than the Dealership Premises, including, but not limited to, any real estate that may be involved in future relocation of the dealership by Buyer.

10.2 Access and Inspection of Premises. Promptly following the expiration of the 30-day financing condition set forth in Section 8.10, above, Seller shall allow Edward M. Stivers, III, John L. Stivers, and the general manager of Buyer's Montgomery Ford dealership to enter the Premises and view and inspect the Premises and all of the Assets located therein to Buyer's reasonable satisfaction, at such time or times, and on such day or days (including a Sunday), as Buyer and Seller may mutually agree.

10.3 Contracts.

(a) No later than thirty-five (35) days from the date of this Agreement, Seller shall provide Buyer with copies of all written contracts to which Seller is a party that relate to the Businesses. Buyer shall review all such contracts to determine which contracts Buyer will (in its sole discretion) assume from Seller, and, within ten (10) days following receipt of such contracts from Seller, Buyer shall deliver to Seller a writing, signed by Buyer, identifying those contracts of Seller that Buyer will assume (collectively, the "Assumed Contracts"). At Closing, Buyer shall assume Seller's liabilities and obligations under the Assumed Contracts as provided in Section 2.7 hereof.

(b) To the extent any Assumed Contract is not assignable without the consent of the other party or parties thereto, neither this Agreement nor the Assumption Agreement will constitute an assignment or attempted assignment thereof at any time prior to the receipt of such consent. If such consent is not obtained on or before the Closing, the parties shall proceed with the Closing and Buyer and Seller shall, after the Closing, cooperate in a mutually agreeable arrangement under which Buyer would obtain the benefits and bear the obligations under such Assumed Contract, including subcontracting, sub-licensing, or subleasing, until such time as Seller has obtained the necessary consent under such Assumed Contract, at which point, Seller shall assign, and Buyer shall assume, the obligations of Seller under such Assumed Contract. Buyer shall cooperate with Seller in Seller' efforts to obtain such consent, including providing any information and/or documentation reasonably requested by any other party or parties to such Assumed Contract, and Buyer and Seller shall share equally any fees or other payments required to be paid to such other party in order to obtain such consent.

10.4 Environmental Due Diligence. As soon as reasonably possible following the expiration of the 30-day financing condition set forth in Section 8.10, above, Seller shall, at Buyer's sole cost, perform a Phase I environmental site assessment of the Dealership Premises and of the Body Shop Premises, using an environmental consulting firm chosen by Seller. Upon completion of each such Phase I assessment, Seller shall promptly deliver copies of the report and other documents generated by such assessment. In connection with each such assessment that is performed, Seller shall cause the consulting firm performing the assessments to furnish a reliance letter to Buyer (or Buyer's assignee under Section 14.1, if Buyer intends to lease the Premises via an assignee) for each assessment, addressed to Buyer (or Buyer's assignee), that permits Buyer to rely on each such assessment in connection with its lease of the Premises from Landlord. Other than the foregoing described assessments, Buyer and Seller shall not conduct any other environmental investigations into the Premises prior to Closing, and Buyer shall have no right to delay the Closing, or require Seller to engage in any remediation or corrective action, as a result of the results of the foregoing described assessments (it being intended by the parties that the indemnity described in Section 2.6(c) will operate to protect Buyer (or Buyer's assignee, as the case may be) from any issues reported in the results of the assessments).

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10.5 Seller's Employees. Provided the Closing takes place, Buyer has the right, but not the obligation, to employ as of the Closing Date any or all of Seller's employees who were employed by Seller in connection with the Businesses prior to the Closing Date. Seller shall not make any representations or promises to any employee of the Businesses concerning the employee's employment by Buyer or any compensation or benefits payable by Buyer to that employee.

10.6 Operation of Business in Ordinary Course. Until the Closing, Seller shall operate the Businesses only in the ordinary course of business consistent with Seller's past practices, except as required to comply with any COVID-19 Measures enacted, adopted, or issued by any Authority and except for any action taken or not taken by Seller to respond to COVID-19 or any COVID-19 Measures.

10.7 Satisfaction of Closing Conditions. Until the Closing, Buyer and Seller shall use their best efforts to obtain, and to cooperate with each other in making all notices and filings and in obtaining, all authorizations, approvals, licenses, permits, and other consents contemplated by Articles VIII and IX.

10.8 Certificates of Title or Origin. Promptly after the Closing, Seller shall transfer to Buyer certificates of title or origin for all New Vehicles, Demo Vehicles, FCTP Vehicles, and Used Vehicles and all of their respective registration lists, owner follow-up lists, and service files on hand as of the Closing Date with respect to the Businesses.

10.9 Prorations; Certain Taxes Payable by Buyer. Following the Closing, Buyer and Seller shall prorate the following taxes, charges, payments, and fees accruing or arising with respect to the Assets and/or the Businesses (collectively, "Charges") on a per diem basis and apportion them between Seller, on the one hand, and Buyer, on the other hand, as of the date of the Closing: personal property taxes; use taxes; assessments with respect to the Assets; rents; utility charges (including water, sewer, electricity, and the like); license fees; prepaid advertising expenses; and employee payrolls. Seller is liable for that portion of the Charges relating to, or arising in respect of, periods prior to the Closing Date, and Buyer is liable for that portion of the Charges relating to, or arising in respect of, any period on or after the Closing Date. Notwithstanding the foregoing, Buyer is liable for, and shall pay, all sales, transfer, and similar taxes attributable to the sale or transfer of the Assets to Buyer hereunder.

10.10 Further Assurances. Upon request of Buyer, which may be made at any time and from time to time after the Closing, Seller shall do, execute, acknowledge, and deliver all such further acts, deeds, assignments, transfers, conveyances, powers of attorney, and assurances, in a form reasonably acceptable to Buyer, as may be reasonably required to convey and transfer to and vest in Buyer, and protect its rights, title, and interest in and enjoyment of, all the Assets.

10.11 No Publicity. Except as may be required by law or as necessary in connection with the transactions contemplated hereby, no party shall, on or before the Closing Date, (a) make any press release or other public announcement relating to this Agreement or the transactions contemplated hereby, without the prior approval of the other parties hereto or (b) otherwise disclose the existence and nature of this Agreement or the negotiations regarding the transactions contemplated hereby to any person or entity other than such party's accountants, attorneys, agents, and representatives, all of whom are subject to this nondisclosure obligation as agents of such party. The parties shall cooperate with each other in the preparation and dissemination of any public announcements of the transactions contemplated by this Agreement that are made on or before the Closing Date. The provisions of this Section survive the termination of this Agreement for any reason.

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10.12 Confidentiality.

(a) Each party shall maintain in confidence, and shall cause their respective shareholders, directors, officers, members, managers, partners, employees, agents, and advisors to maintain in confidence, any written, oral, or other information obtained from the other party in connection with this Agreement or the transactions contemplated hereby, unless: (a) such information is already known to such party or to others not bound by a duty of confidentiality or such information becomes publicly available through no fault of such party; (b) the use of such information is necessary or appropriate in making any filing or obtaining any consent or approval required for the consummation of the transactions contemplated hereby; or (c) the furnishing or use of such information is required by legal proceedings. If the transactions contemplated hereby are not consummated, each party shall return or destroy as much of such written information as the other party may reasonably request. The confidentiality provisions of this Section survive the termination of this Agreement for any reason.

(b) Notwithstanding the provisions of Section 10.12(a), above, the Confidentiality and Non-Disclosure Agreement dated August 12, 2019, between Buyer and Seller (the "Confidentiality Agreement") shall remain in full force and effect and unmodified by this Agreement. Seller understands that Buyer is attempting to purchase suitable real property for the re-location of the Dealership Premises and, in connection therewith, is seeking tax incentives from the relevant government authorities, the pursuit of which will require Buyer to disclose to such authorities certain information concerning the transactions described in this Agreement. Prior to making any such disclosures to any governmental authorities, Buyer shall use its best efforts to cause such authorities to agree to be bound, in writing, by non-disclosure terms similar to those set forth in the Confidentiality Agreement. However, if Buyer cannot cause any such authorities to agree to be so bound, then Seller agrees that Buyer shall be permitted to disclose the following information to such authorities: (1) following Seller's notification of Manufacturer concerning the transactions described herein as required by Section 10.1, above, Buyer shall be free to disclose the fact that Buyer is relocating "a domestic new vehicle franchise" (or similar words to that effect that do not specifically identify Seller and do not identify in any way Seller's present location) to such real property; (2) after expiration, or Buyer's earlier termination, of the 30-day financing condition set forth in Section 8.10, above, Buyer shall be free to disclose the fact that Buyer is relocating a "Ford" dealership and/or the Dealership Business to such real property. In addition to the foregoing, Buyer shall be free to disclose to Buyer's lender(s), architectural firm(s), engineering firm(s), and their officers and employees, in connection with Buyer's construction of Buyer's new facility for the re-location of the Dealership Premises, the fact that Buyer is constructing a Ford facility on the real property that Buyer purchases for the relocation of the Dealership Premises; provided, such parties agree to be bound by non-disclosure terms at least as stringent as those set forth in the Confidentiality Agreement. In furtherance of all of the foregoing, each party shall execute such documents and/or take such actions as is reasonably requested by the other party hereto to evidence the ability of Buyer to make the foregoing disclosures and/or to adequately protect Seller under the remaining terms of the Confidentiality Agreement.

ARTICLE XI
INDEMNIFICATION

11.1 Indemnification by Seller. Seller indemnifies and holds harmless Buyer and, if applicable, Buyer's assignee(s) permitted under Section 14.1 and their respective shareholders, directors, officers, members, managers, partners, employees, agents, successors, and assigns (collectively, "Buyer Indemnitees"), from and against all losses, damages, liabilities, obligations, assessments, suits, actions, proceedings, claims, or demands, including costs, expenses, and fees (including reasonable attorneys' fees and expert witness fees) incurred in connection with, suffered by any of them or asserted against any of

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them or the Assets (collectively, "Buyer's Losses"), arising out of or based on: (a) the failure of any representation or warranty of Seller contained herein, or in any agreement or certificate executed and delivered by Seller in connection herewith, to be true and correct in all material respects when made; (b) the breach in any material respect of any covenant or agreement of Seller contained in this Agreement; (c) any liability or obligation of Seller (including any liabilities or obligations arising out of the operation of the Assets or the Businesses prior to the Closing), other than Seller's liabilities and obligations under the Assumed Liabilities arising from and after the Closing; and (d) any arrangements or agreements made or alleged to have been made by Seller with any broker, finder, or other agent in connection with the transactions contemplated hereby.

11.2 Indemnification by Buyer. Buyer and, if applicable, Buyer's assignee(s) permitted under Section 14.1, jointly and severally indemnify and hold harmless Seller and its officers, members, managers, employees, agents, personal representatives, successors, and assigns (collectively, "Seller Indemnitees"), from and against all losses, damages, liabilities, obligations, assessments, suits, actions, proceedings, claims, or demands, including costs, expenses, and fees (including reasonable attorneys' fees and expert witness fees) incurred in connection with, suffered by any of them, or asserted against any of them (collectively, "Seller's Losses"), arising out of or based upon: (a) the failure of any representation or warranty of Buyer or Buyer's assignee(s) contained herein, or in any agreement or certificate executed and delivered by Buyer or Buyer's assignee(s) in connection herewith, to be true and correct in all material respects when made; (b) the breach in any material respect of any covenant or agreement of Buyer or Buyer's assignee(s) contained in this Agreement; (c) Seller's liabilities and obligations under the Assumed Liabilities arising from and after the Closing; (d) any liabilities or obligations arising out of the operation of the Assets or the Businesses after the Closing; and (e) any arrangements or agreements made or alleged to have been made by Buyer or Buyer's assignee(s) with any broker, finder, or other agent in connection with the transactions contemplated hereby.

11.3 Indemnification Procedures Regarding Third Party Claims. If any party to this Agreement becomes aware of or receives notice of any third party claim or the commencement of any third party action or proceeding with respect to which another party ("Indemnitor") is obligated to provide indemnification under this Article, the party entitled to indemnification ("Indemnitee") shall promptly give Indemnitor notice thereof. Such notice will not be a condition precedent to any liability of Indemnitor under the provisions for indemnification contained in this Article, unless (and only to the extent that) failure to give such notice materially prejudices the rights of Indemnitor with respect to such claims, actions, or proceedings. Indemnitor may compromise or defend, at Indemnitor's own expense, and by Indemnitor's own counsel reasonably acceptable to Indemnitee, any such matter involving the asserted liability of Indemnitee; provided, however, that no compromise or settlement thereof may be effected by Indemnitor without Indemnitee's consent (which will not be unreasonably withheld or delayed); and further provided that an Indemnitor may not undertake the defense of any such third party claim unless (i) the claim is solely for monetary damages, and (ii) Indemnitor confirms in writing to Indemnitee (and to such third party), prior to undertaking such defense or prior to making such compromise or settlement, that the matter concerning indemnification is indemnifiable by Indemnitor. If Indemnitor elects not to compromise or defend such matter or if Indemnitor may not undertake the defense of such third party claim, then Indemnitee, at Indemnitor's expense and by Indemnitee's own counsel, may defend such matter, but regardless of whether or not Indemnitor elects to assume the defense of any such matter Indemnitee may not compromise the defense thereof without the prior written consent of Indemnitor, which consent will not be unreasonably withheld or delayed. In any event, Indemnitee, Indemnitor, and Indemnitor's counsel (and, if applicable, Indemnitee's counsel) shall cooperate in the compromise of, or the defense against, any such asserted liability. If Indemnitor chooses to defend any claim, Indemnitee shall make available to Indemnitor any books, records, or other documents within Indemnitee's control that are reasonably necessary or appropriate for such defense.

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The foregoing indemnity procedures are not to be read as a limitation on any party's right to seek indemnification under this Article for matters other than third-party initiated claims or demands.

11.4 Survival of Representations and Warranties. All representations and warranties of Buyer and Seller contained herein, or in any agreement or certificate executed and delivered by any of them pursuant to this Agreement, will survive the Closing for a period of two (2) years from the Closing Date, except that the representations and warranties of Seller that relate expressly or by necessary implication to Taxes or employment or labor matters will survive until 90 days after the expiration of the applicable statutes of limitations (including all periods of extension and tolling). After a representation and warranty has terminated and expired, no party may seek indemnification pursuant to this Article XI on the basis of that representation and warranty, provided, however, that no claim for indemnification pursuant to this Article XI presented in writing prior to the termination and expiration of any such period of time will be affected by that termination and expiration.

11.5 Certain Limitations on Indemnification. No Indemnitee pursuant to Section 11.1 or 11.2, as the case may be, is entitled to any recovery for any Buyer's Losses or Seller's Losses, as the case may be (in either case, "Losses"), suffered by such Indemnitee as a result of a breach of a representation warranty, covenant, or agreement under this Agreement by an Indemnitor, unless and until the aggregate amount of all Losses suffered by such Indemnitee as a result of all breaches of representations , warranties, covenants, and agreements hereunder exceed a cumulative aggregate total of $25,000 (the "Basket"), in which event the Losses may be claimed, but only to the extent that they exceed the Basket. For purposes of this Section, Buyer Indemnitees will be considered as one Indemnitee. Notwithstanding any other provision of this Agreement, the aggregate total liability of Seller under this Article will not exceed One Million Dollars ($1,000,000).

11.6 Non-Reliance by Buyer and Buyer Indemnitees. Buyer, on behalf of itself, and all other Buyer Indemnitees, acknowledges and agrees that Buyer Indemnitees have not relied on, and are not relying on, any representations warranties, or other statements whatsoever, whether written, oral or otherwise, or any omission, made by or on behalf of or imputed to Seller regarding the subject matter of this Agreement, except as expressly set forth in this Agreement, and that Buyer and the other Buyer Indemnitees will not have any right or remedy arising out of any representation, warranty, or statement whatsoever, whether written, oral or otherwise, not set forth in this Agreement (and the Schedules attached hereto).

ARTICLE XII
TERMINATION

12.1 Termination. Notwithstanding any other provision of this Agreement, this Agreement may be terminated at any time:

(a) By the mutual written consent of Buyer and Seller;

(b) By Buyer, prior to the Closing Date Deadline in the event of any material breach by Seller of any of its representations, warranties, covenants, or agreements contained herein, and such breach, if curable, has not been cured within ten (10) Business Days after written notice by Buyer to Seller;

(c) By Seller, prior to the Closing Date Deadline in the event of any material breach by Buyer of any of its representations, warranties, covenants or agreements contained herein, and such

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breach, if curable, has not been cured within ten (10) Business Days after written notice by Seller to Buyer;

(d) At any time after the Closing Date Deadline, by written notice by Buyer or Seller to the other party hereto if the Closing has not been completed on or before the Closing Date Deadline;

(e) By Buyer, by written notice to Seller at any time prior to the expiration of the 30-day financing condition set forth in Section 8.10, in the event Buyer cannot obtain financing from one or more lending institutions for the purchase of the Assets on terms satisfactory to Buyer; or

(f) By Buyer or Seller, by written notice to Buyer prior to the Closing Date Deadline, in the event Manufacturer declines to approve the transfer of the Dealership Business to Buyer or to approve Buyer as an authorized dealer at the Dealership Premises;

provided, however, neither party may terminate this Agreement pursuant to clauses (b), (c), or (d), above if such party is at that time in material breach of any of its representations, warranties, covenants or agreements contained herein; provided further, however, if Manufacturer, or any person claiming by, through or under Manufacturer, exercises any right of first refusal, preemptive right, or other similar right, with respect to any of the Assets or this Agreement, this Agreement may not be terminated by Buyer pursuant to clause (d), above, but Buyer will be entitled to a return of the Escrow Deposit upon the execution by Buyer and Seller of a mutual release from this Agreement and execution by Buyer of any requested assignment of this Agreement by Buyer to Manufacturer or such person.

12.2 General Effect of Termination. In the event of termination of this Agreement pursuant to Section 12.1, this Agreement will be of no further force or effect; provided, however, that any termination pursuant to Section 12.1 will not relieve any party of (i) any liability or obligation under Sections 12.3 through 12.5 or (ii) any liability or obligation hereunder that expressly provides for its survival after such termination.

12.3 Termination as a Result of Buyer's Breach. If this Agreement is terminated by Seller pursuant to Section 12.1(c), or Section 12.1(d) (where the failure to complete the Closing on or before the Closing Date Deadline is due to Buyer's material breach of any of its representations, warranties, covenants or agreements under this Agreement), then Buyer shall forfeit all right, title and interest in and to the Escrow Deposit, and Escrow Agent shall deliver the Escrow Deposit to Seller in full payment and as liquidated damages of Seller, which shall be Seller's sole and exclusive remedy hereunder for such breach.

12.4 Termination as a Result of Seller's Breach. If this Agreement is terminated by Buyer pursuant to Section 12.1(b), or Section 12.1(d) (where the failure to complete the Closing on or before the Closing Date Deadline is due to Seller's material breach of any of its representations, warranties, covenants or agreements under this Agreement), then Buyer will be entitled to a return of the Escrow Deposit and, in addition thereto, may pursue any or all of its rights and remedies available to it at law or in equity, whether such right or remedy is based on statute, case law, or otherwise; provided, however, that in no event will Seller be liable to Buyer for any indirect, special, punitive, or consequential damages, including, but not limited to, lost profits or diminution of value.

12.5 Termination for Other Reasons. If this Agreement is terminated for a reason other than as set forth in Section 12.3 or Section 12.4, the Escrow Deposit will be forfeited by Buyer and paid by the Escrow Agent to Seller, and such forfeiture will be Seller's sole and exclusive remedy hereunder for such termination.

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ARTICLE XIII
REMEDIES

13.1 Remedies. The remedies of the parties under this Agreement are as follows:

(a) If the Closing has occurred, and absent a showing of fraud by a party in connection with any representation, warranty, covenant, or agreement given or made by such party in this Agreement, the sole and exclusive remedy of a party against another party for monetary damages for breach of any representation, warranty, covenant or agreement contained in this Agreement will be the indemnification obligation of such breaching party under the applicable provisions of Article XI; provided, however, that nothing contained in this Section 13.1(a) or Article XI will limit a party's right to seek injunctive or equitable relief in connection with the enforcement of this Agreement after the Closing.

(b) If the Closing has not occurred, the remedies of a party against another party for all claims related to this Agreement will be limited to the remedies available to that party as are set forth in Sections 12.3 through 12.5.

ARTICLE XIV
MISCELLANEOUS

14.1 Assignment. Except as provided in this Section, this Agreement is not assignable by any party without the prior written consent of the other parties. Notwithstanding the foregoing, Buyer may assign this Agreement, without the consent of Seller, to one or more business entities controlled by Buyer or one or more of Buyer's shareholders; provided, said assignment(s) is (are) in a writing reasonably satisfactory to Seller and the assignee(s) shall assume all obligations and agreements of Buyer hereunder, provided further, that Buyer will not be released from, and shall continue to be liable with respect to, its obligations and agreements hereunder as fully as if such assignment had not been made. In connection with the foregoing, Seller acknowledges that Buyer may assign its specific rights and obligations under Section 2.6 with respect to the Operating Leases and Real Estate Leases to one entity controlled by Buyer or one or more of Buyer's shareholders and separately assign all other rights and obligations hereunder to another entity controlled by Buyer or one or more of Buyer's shareholders. If any part of this Agreement is assigned by Buyer pursuant to this Section, in addition to Buyer's required deliveries pursuant to Section 9.4, Buyer shall make similar deliveries to Seller with respect to Buyer's assignee(s).

14.2 Governing Law. The interpretation and construction of this Agreement, and all matters relating hereto, is governed by the laws of the State of Alabama.

14.3 Severability. If any provision, or part thereof, of this Agreement is held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions, or parts thereof, will not in any way be affected or impaired thereby.

14.4 Fees and Expenses. Except as otherwise specifically provided in this Agreement, each of the parties is responsible for the payment of such party's fees, costs, and expenses incurred in connection with the negotiation and consummation of the transactions contemplated hereby.

14.5 Amendments; Merger Clause. This Agreement, including any exhibits and schedules referred to herein that form a part hereof, contains the entire understanding of the parties with respect to the subject matter contained herein and therein. This Agreement may not be amended except by a writing executed by all of the parties. This Agreement supersedes all prior agreements and understandings

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between the parties with respect to such subject matter, including specifically the Letter of Intent between Buyer and Seller dated June 15, 2020, but, excluding specifically the Confidentiality Agreement (as defined in section 10.13(b)) which shall remain in full force and effect and unmodified by this Agreement. The parties acknowledge and agree that they are not relying on any statement, fact, or representation other than those expressly set forth in this Agreement and its schedules.

14.6 Waiver. To the extent permitted by applicable law, no claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other parties. Any waiver by a party of a breach of any provision of this Agreement will not operate or be construed as a waiver of any subsequent breach of such provision or any other provision of this Agreement. Neither the failure nor any delay by any party in exercising any right or power under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right or power, and no single or partial exercise of any such right or power will preclude any other or further exercise of such right or power or the exercise of any other right or power.

14.7 Notices. Each party giving or making any notice, request, demand, or other communication (each, a "notice") pursuant to this Agreement shall give the notice in writing, cause the notice to be signed by the party's authorized representative, and deliver the notice either by (a) personal delivery, with signed receipt requested, (b) registered or certified mail, postage prepaid, with return receipt requested, or (c) nationally recognized overnight courier, all fees prepaid, with signature or receipt requested, in each case addressed to the receiving party at the address listed below for the receiving party or to any other address designated by the receiving party in a notice in accordance with this Section:

If to Buyer, to:

E.M. Stivers, Inc.
4000 Eastern Boulevard
Montgomery, Alabama 36116
Attention: Edward M. Stivers, III

With a copy to:
McBride Law LLC
1784 Taliaferro Trail, Suite B
Montgomery, Alabama 36117
Attention: Richard L. McBride Jr.

With a copy to:
Rushton, Stakely, Johnston & Garrett, P.A.
184 Commerce Street
Montgomery, Alabama 36104
Attention: William I. Eskridge

If to Seller, to:

Adamson Ford, LLC
111 Dexter Ave
Birmingham, AL 35213
Attention: Linnea R. Israel, Manager

With a copy to:
Jones Walker LLP
420 20th Street N, Suite 1100
Birmingham, Alabama 35203
Attention: John W. Gant Jr.

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A notice is effective only if the sending party has complied with the provisions for giving notice in this Section, and the receiving party has received the notice. A notice is deemed received by the receiving party as follows: (1) if delivered in person or sent by registered or certified mail or by national recognized overnight courier, then upon receipt as indicated by the date on the signed receipt; or (2) if the receiving party rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, then upon that rejection, refusal, or inability to deliver.

14.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which is to be deemed an original, and all of which are be taken to be one and the same instrument, and a facsimile or electronic (i.e., PDF) copy of an executed counterpart will constitute the same as delivery of the original of such executed counterpart and any signature so transmitted will be the binding signature of the signing party. Any signature page of this Agreement (whether original, facsimile, or electronic) may be detached from any counterpart of this Agreement (whether original, facsimile, or electronic) without impairing the legal effect of any signatures thereof and may be attached to another counterpart of this Agreement (whether original, facsimile, or electronic) identical in form hereto but having attached to it one or more additional signature pages (whether original, facsimile, or electronic), with the same effect as if all signature pages of this Agreement were executed on one and the same counterpart.

14.9 Permitted Successors and Assigns; No Third-Party Beneficiaries. Subject to Section 14.1, this Agreement is binding upon, inures to the benefit of and is enforceable by the respective successors and assigns of the parties. Nothing in this Agreement, expressed or implied, is intended or is to be construed to confer upon or give to any employee of Seller, or any other person, firm, corporation, or legal entity, other than the parties and their successors and permitted assigns, any rights, remedies, or other benefits under or by reason of this Agreement.

14.10 Headings. The article and section headings contained in this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement.

14.11 Interpretation and Construction. The parties have negotiated the terms of this Agreement, reviewed this Agreement carefully, and been given the opportunity to discuss it with their respective legal counsel. The parties intend that each word, phrase, and sentence and other part of this Agreement is to be given its plain meaning, and that rules of interpretation or construction of contracts that would construe any ambiguity of any part of this Agreement against the draftsman, by virtue of being the draftsman, do not apply.

[Signatures Begin on the Next Page]

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

"BUYER":

E.M. STIVERS, INC.,
A MISSOURI CORPORATION

By:_____
Edward M. Stivers, III
Its Vice President

"SELLER":

ADAMSON FORD, LLC,
AN ALABAMA LIMITED LIABILITY COMPANY

By:_____
Linnea R. Israel
Its Manager

"BUYER"

E M [illegible] Inc.
A MISSOURI CORPORATION

By: _____
Edward M [illegible] II
Its Vice President

"SELLER"

ADAMSON FORD, LLC,
AN ALABAMA LIMITED [illegible] COMPANY

By: _____
Linnea R. Israel
Its Manager

M

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Schedule 2.5

Other Excluded Assets

1. Photographs and portraits of John Israel and William B. Israel

2. Linnea Israel's office furniture and furnishings, including, partner's desk, rug, vase, and lamp.

3. Items bearing Seller's name including framed photographs, advertising, historic records, and the like.

4. Two (2) laptop computers containing accounting and tax records of Seller's affiliates and related software.

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Schedule 7.4

Title to Assets

Except for Liens on the Assets evidenced by the following:

1. Security Interest granted pursuant to UCC-1 Financing Statement in favor of Central Bank of the South, filed in the Secretary of State, State of Alabama, A143644R, November 30, 1984; Continuation filed September 18, 1989; Continuation and Amendment filed August 16, 1994; Amendment filed December 21, 1994 (Compass Bank); Continuation filed July 2, 1999 (Compass Bank); Continuation and Amendment filed August 9, 2004 (Compass Bank); Continuation filed July 17, 2009 (Compass Bank); Continuation filed October 1, 2014 (Compass Bank)

2. Security Interest granted pursuant to UCC-1 Financing Statement in favor of Ford Motor Credit Company LLC, filed in the Secretary of State, State of Alabama, 1996-17185, April 23, 1996; UCC Financing Statement Amendment filed July 13, 2010, Continuation – filed December 6, 2010; Continuation, filed November 16, 2015

3. Security Interest granted pursuant to UCC-1 Financing Statement in favor of Ford Motor Credit Company, filed in the Secretary of State, State of Alabama, B 2000-44369, November 9, 2000; UCC Financing Statement Amendment - Continuation filed July 21, 2005; UCC Financing Statement Amendment - Continuation filed July 13, 2010; UCC Financing Statement Amendment - Continuation filed June 11, 2015; UCC Financing Statement Amendment filed August 20, 2018

4. Security Interest granted pursuant to UCC-1 Financing Statement in favor of ServisFirst Bank, filed in the Secretary of State, State of Alabama, B 14-0218804, June 3, 2014; UCC Financing Statement Amendment – Continuation filed January 3, 2019

5. Security Interest granted pursuant to UCC-1 Financing Statement in favor of McPherson Companies, Inc., filed in the Secretary of State, State of Alabama, 17-7525141, October 13, 2017

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Schedule 7.8

Employment Agreements and Other Compensation Plans

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Book 2608-2240
2021023835 04/22/2021 10:29:41:420 Mortgage
Fee: $25.00 County Tax: $0.00 State Tax: $0.00
2021023835 John T. Hopkins II Richland County R.O.D.

Horger, Barnwell & McCurry, LLP
PO Drawer 329
Orangeburg, SC 29116-0329

WHEN RECORDED MAIL TO:
SERVISFIRST BANK
2500 WOODCREST PLACE
BIRMINGHAM, AL 35209

SEND TAX NOTICES TO:
STIVERS REALTY, L.C.
1034 S BRENTWOOD BLVD STE 1300
SAINT LOUIS, MO 63117

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

00000000000046045%0745%04192021%################

MORTGAGE

MAXIMUM LIEN. The lien of this Mortgage shall not exceed at any one time $3,180,000.00.

THIS MORTGAGE dated April 19, 2021, is made and executed between STIVERS REALTY, L.C., whose address is 1034 S BRENTWOOD BLVD STE 1300, SAINT LOUIS, MO 63117 (referred to below as "Grantor") and ServisFirst Bank, whose address is 2500 WOODCREST PLACE, BIRMINGHAM, AL 35209 (referred to below as "Lender").

GRANT OF MORTGAGE. For valuable consideration, Grantor mortgages, grants, and conveys to Lender all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, **(the "Real Property") located in RICHLAND County, State of South Carolina:**

See EXHIBIT A, which is attached to this Mortgage and made a part of this Mortgage as if fully set forth herein.

The Real Property or its address is commonly known as 9950 and 9960 FARROW RD, COLUMBIA, SC 29203.

CROSS-COLLATERALIZATION. In addition to the Note, this Mortgage secures the following described additional indebtedness: All obligations, debts and liabilities, which includes but is not limited to any and all Automated Clearing House (ACH) services, purchase card (P-Card) services, or other treasury management services obligations, plus interest thereon, of Grantor to Lender, or any one of them, as well as all claims by Lender against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

Grantor presently assigns to Lender all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS MORTGAGE. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Mortgage, Grantor shall pay to Lender all amounts secured by this Mortgage as they become due and shall strictly perform all of Grantor's obligations under this Mortgage.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

Duty to Maintain. Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Mortgage. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Mortgage or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Mortgage, including the obligation to indemnify and defend, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Without otherwise limiting Grantor's covenants as provided herein, Grantor shall not without Lender's prior written consent, remove or permit the removal of sand, gravel or topsoil, or engage in borrow pit operations, or use or permit the use of the Property as a land fill or dump, or store, burn or bury or permit the storage, burning or burying of any material or product which may result in contamination of the Property or the groundwater or which may require the issuance of a permit by the Environmental Protection Agency or any state or local government agency governing the issuance of hazardous or toxic waste permits, or request or permit a change in zoning or land use classification, or cut or remove or suffer the cutting or removal of any trees or timber from the Property.

At its sole cost and expense, Grantor shall comply with and shall cause all occupants of the Property to comply with all Environmental Laws with respect to the disposal of industrial refuse or waste, and/or the discharge, processing, manufacture, generation, treatment, removal, transportation, storage and handling of Hazardous Substances, and pay immediately when due the cost of removal of any such wastes or substances from, and keep the Property free of any lien imposed pursuant to such laws, rules, regulations and orders.

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Grantor shall not install or permit to be installed in or on the Property, friable asbestos or any substance containing asbestos and deemed hazardous by federal, state or local laws, rules, regulations or orders respecting such material. Grantor shall further not install or permit the installation of any machinery, equipment or fixtures containing polychlorinated biphenyls (PCBs) on or in the Property. With respect to any such material or materials currently present in or on the Property, Grantor shall promptly comply with all applicable Environmental Laws regarding the safe removal thereof, at Grantor's expense.

Grantor shall indemnify and defend Lender and hold Lender harmless from and against all loss, cost, damage and expense (including, without limitation, attorneys' fees and costs incurred in the investigation, defense and settlement of claims) that Lender may incur as a result of or in connection with the assertion against Lender of any claim relating to the presence or removal of any Hazardous Substance, or compliance with any Environmental Law. No notice from any governmental body has ever been served upon Grantor or, to Grantor's knowledge after due inquiry, upon any prior owner of the Property, claiming a violation of or under any Environmental Law or concerning the environmental state, condition or quality of the Property, or the use thereof, or requiring or calling attention to the need for any work, repairs, construction, removal, cleanup, alterations, demolition, renovation or installation on, or in connection with, the Property in order to comply with any Environmental Law; and upon receipt of any such notice, Grantor shall take any and all steps, and shall perform any and all actions necessary or appropriate to comply with the same, at Grantor's expense. In the event Grantor fails to do so, Lender may declare this Mortgage to be in default.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Grantor shall not demolish or remove any Improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any Improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Mortgage.

Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

DUE ON SALE - CONSENT BY LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any restructuring of the legal entity (whether by merger, division or otherwise) or any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by South Carolina law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Mortgage:

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, payroll taxes, special taxes, assessments, water charges and sewer service charges levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of any liens having priority over or equal to the interest of Lender under this Mortgage, except for those liens specifically agreed to in writing by Lender, and except for the lien of taxes and assessments not due as further specified in the Right to Contest paragraph.

Right to Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and reasonable attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Mortgage:

Maintenance of Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption and boiler insurance as Lender may require. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to Lender. Grantor shall deliver to Lender certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of thirty (30) days' prior written notice to Lender and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Administrator of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain flood insurance, if available, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan. Flood insurance may be purchased under the National Flood Insurance Program, from private insurers providing "private flood insurance" as defined by applicable federal flood insurance statutes and regulations, or from another flood insurance provider that is both acceptable to Lender in its sole discretion and permitted by applicable federal flood insurance statutes and regulations.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Mortgage. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Mortgage, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds

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after payment in full of the Indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

Unexpired Insurance at Sale. Any unexpired insurance shall inure to the benefit of, and pass to, the purchaser of the Property covered by this Mortgage at any trustee's sale or other sale held under the provisions of this Mortgage, or at any foreclosure sale of such Property.

Grantor's Report on Insurance. Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Mortgage or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Mortgage or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note, or the maximum rate permitted by law, whichever is less, from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Mortgage also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon the occurrence of any Event of Default.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Mortgage:

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Mortgage, and (b) Grantor has the full right, power, and authority to execute and deliver this Mortgage to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Lender under this Mortgage, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Mortgage shall survive the execution and delivery of this Mortgage, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's Indebtedness shall be paid in full.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Mortgage:

Notice of Proceedings. Grantor shall immediately notify Lender in writing should all or any part of the Property become subject to any condemnation or expropriation proceedings or other similar proceedings, including without limitation, any condemnation, confiscation, eminent domain, inverse condemnation or temporary requisition or taking of the mortgaged Property, or any part or parts of the Property. Grantor further agrees to promptly take such steps as may be necessary and proper within Lender's sole judgment and at Grantor's expense, to defend any such condemnation or expropriation proceedings and obtain the proceeds derived from such proceedings. Grantor shall not agree to any settlement or compromise or any condemnation or expropriation claim without Lender's prior written consent.

Lender's Participation. Lender may, at Lender's sole option, elect to participate in any such condemnation or expropriation proceedings and be represented by counsel of Lender's choice. Grantor agrees to provide Lender with such documentation as Lender may request to permit Lender to so participate and to reimburse Lender for Lender's costs associated with Lender's participation, including Lender's reasonable attorneys' fees.

Conduct of Proceedings. If Grantor fails to defend any such condemnation or expropriation proceedings to Lender's satisfaction, Lender may undertake the defense of such a proceeding for and on behalf of Grantor. To this end, Grantor irrevocably appoints Lender as Grantor's agent and attorney-in-fact, such agency being coupled with an interest, to bring, defend, adjudicate, settle, or otherwise compromise such condemnation or expropriation claims; it being understood, however, that, unless one or more Events of Default (other than the condemnation or expropriation of the Property) then exists under this Mortgage, Lender will not agree to any final settlement or compromise of any such condemnation or expropriation claim without Grantor's prior approval, which approval shall not be unreasonably withheld.

Application of Net Proceeds. Lender shall have the right to receive all proceeds derived or to be derived from the condemnation, expropriation, confiscation, eminent domain, inverse condemnation, or any permanent or temporary requisition or taking of the Property, or any part or parts of the Property ("condemnation proceeds"). In the event that Grantor should receive any such condemnation proceeds, Grantor agrees to immediately turn over and to pay such proceeds to Lender. All condemnation proceeds, which are received by, or which are payable to either Grantor or Lender, shall be applied, at Lender's sole option and discretion, and in such manner as Lender may determine (after payment of all reasonable costs, expenses and attorneys' fees necessarily paid or incurred by Grantor and/or Lender), for the purpose of: (a) replacing or restoring the condemned, expropriated, confiscated, or taken Property; or (b) reducing the then outstanding balance of the Indebtedness, together with interest thereon, with such payments being applied in the manner provided in this Mortgage. Lender's receipt of such condemnation proceeds and the application of such proceeds as provided in this Mortgage shall not affect the lien of this Mortgage.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Mortgage:

Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Mortgage and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Mortgage, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Mortgage.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Mortgage or upon all or any part of the Indebtedness secured by this Mortgage; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the Indebtedness secured by this type of Mortgage; (3) a tax on this type of Mortgage chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Grantor.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Mortgage, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Mortgage as a security agreement are a part of this Mortgage:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Mortgage in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Mortgage as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not

affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Mortgage may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Mortgage.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Mortgage:

Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Mortgage, and the Related Documents, and (2) the liens and security interests created by this Mortgage as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

FULL PERFORMANCE. If Grantor pays all the Indebtedness when due, and otherwise performs all the obligations imposed upon Grantor under this Mortgage, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Grantor will pay, if permitted by applicable law, any reasonable termination fee as determined by Lender from time to time.

EVENTS OF DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Mortgage:

Payment Default. Grantor fails to make any payment when due under the Indebtedness.

Default on Other Payments. Failure of Grantor within the time required by this Mortgage to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Other Defaults. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Mortgage or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

Default in Favor of Third Parties. Should Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Grantor's property or Grantor's ability to repay the Indebtedness or Grantor's ability to perform Grantor's obligations under this Mortgage or any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf, or made by Guarantor, or any other guarantor, endorser, surety, or accommodation party, under this Mortgage or the Related Documents in connection with the obtaining of the Indebtedness evidenced by the Note or any security document directly or indirectly securing repayment of the Note is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Mortgage or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Grantor's existence as a going business or the death of any member, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Execution; Attachment. Any execution or attachment is levied against the Property, and such execution or attachment is not set aside, discharged or stayed within thirty (30) days after the same is levied.

Change in Zoning or Public Restriction. Any change in any zoning ordinance or regulation or any other public restriction is enacted, adopted or implemented, that limits or defines the uses which may be made of the Property such that the present or intended use of the Property, as specified in the Related Documents, would be in violation of such zoning ordinance or regulation or public restriction, as changed.

Default Under Other Lien Documents. A default occurs under any other mortgage, deed of trust or security agreement covering all or any portion of the Property.

Judgment. Unless adequately covered by insurance in the opinion of Lender, the entry of a final judgment for the payment of money involving more than ten thousand dollars ($10,000.00) against Grantor and the failure by Grantor to discharge the same, or cause it to be discharged, or bonded off to Lender's satisfaction, within thirty (30) days from the date of the order, decree or process under which or pursuant to which such judgment was entered.

Breach of Other Agreement. Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor, or any other guarantor, endorser, surety, or accommodation party of any of the Indebtedness or any Guarantor, or any other guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of an Event of Default and at any time thereafter, Lender, at Lender's option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

Accelerate Indebtedness. Lender shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty that Grantor would be required to pay.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Grantor, to take possession of the Property and, as mortgagee-in-possession, collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

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Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Judicial Foreclosure. Lender may obtain a judicial decree foreclosing Grantor's interest in all or any part of the Property.

Nonjudicial Sale. If permitted by applicable law, Lender may foreclose Grantor's interest in all or in any part of the Personal Property or the Real Property by non-judicial sale.

Deficiency Judgment. If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section.

Tenancy at Sufferance. If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Lender shall have all other rights and remedies provided in this Mortgage or the Note or available at law or in equity.

Sale of the Property. To the extent permitted by applicable law, Grantor hereby waives any and all right to have the Property marshalled. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Mortgage, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies. Nothing under this Mortgage or otherwise shall be construed so as to limit or restrict the rights and remedies available to Lender following an Event of Default, or in any way to limit or restrict the rights and ability of Lender to proceed directly against Grantor and/or against any other co-maker, guarantor, surety or endorser and/or to proceed against any other collateral directly or indirectly securing the Indebtedness.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees in an amount not less than fifteen percent (15%) of the amount owing on the Indebtedness and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

NOTICES. Any notice required to be given under this Mortgage, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Mortgage. All copies of notices of foreclosure from the holder of any lien which has priority over this Mortgage shall be sent to Lender's address, as shown near the beginning of this Mortgage. Any party may change its address for notices under this Mortgage by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Mortgage:

Amendments. This Mortgage, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Mortgage. No alteration of or amendment to this Mortgage shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Annual Reports. If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

Caption Headings. Caption headings in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.

Governing Law. With respect to procedural matters related to the perfection and enforcement of Lender's rights against the Property, this Mortgage will be governed by federal law applicable to Lender and to the extent not preempted by federal law, the laws of the State of South Carolina. In all other respects, this Mortgage will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Alabama without regard to its conflicts of law provisions. However, if there ever is a question about whether any provision of this Mortgage is valid or enforceable, the provision that is questioned will be governed by whichever state or federal law would find the provision to be valid and enforceable. The loan transaction that is evidenced by the Note and this Mortgage has been applied for, considered, approved and made, and all necessary loan documents have been accepted by Lender in the State of Alabama.

Choice of Venue. If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of JEFFERSON County, State of Alabama.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Mortgage unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Mortgage shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Mortgage. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Mortgage, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Mortgage to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Mortgage. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Mortgage shall not affect the legality, validity or enforceability of any other provision of this Mortgage.

Non-Liability of Lender. The relationship between Grantor and Lender created by this Mortgage is strictly a debtor and creditor relationship and not fiduciary in nature, nor is the relationship to be construed as creating any partnership or joint venture between Lender and Grantor. Grantor is exercising Grantor's own judgment with respect to Grantor's business. All information supplied to Lender is for Lender's protection only and no other party is entitled to rely on such information. There is no duty for Lender to review, inspect, supervise or inform Grantor of any matter with respect to Grantor's business. Lender and Grantor intend that Lender may reasonably rely on all information supplied by Grantor to Lender, together with all representations and warranties given by Grantor to Lender, without investigation or confirmation by Lender and that any investigation or failure to investigate will not diminish Lender's right to so rely.

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Merger. There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Sole Discretion of Lender. Whenever Lender's consent or approval is required under this Mortgage, the decision as to whether or not to consent or approve shall be in the sole and exclusive discretion of Lender and Lender's decision shall be final and conclusive.

Successors and Assigns. Subject to any limitations stated in this Mortgage on transfer of Grantor's interest, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Mortgage and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Mortgage or liability under the Indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Mortgage.

Waive Jury. All parties to this Mortgage hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

Waiver of Homestead Exemption. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of South Carolina as to all Indebtedness secured by this Mortgage.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Mortgage. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Mortgage shall have the meanings attributed to such terms in the Uniform Commercial Code:

Borrower. The word "Borrower" means STIVERS REALTY, L.C. and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean individually, collectively, and interchangeably any of the events of default set forth in this Mortgage in the events of default section of this Mortgage.

Grantor. The word "Grantor" means STIVERS REALTY, L.C..

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness, and, in each case, the successors, assigns, heirs, personal representatives, executors and administrators of any guarantor, surety, or accommodation party.

Guaranty. The word "Guaranty" means the guaranty from Guarantor, or any other guarantor, endorser, surety, or accommodation party to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, earned interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Lender to enforce Grantor's obligations under this Mortgage, together with interest on such amounts as provided in this Mortgage. Specifically, without limitation, Indebtedness includes all amounts that may be indirectly secured by the Cross-Collateralization provision of this Mortgage.

Lender. The word "Lender" means ServisFirst Bank, its successors and assigns.

Mortgage. The word "Mortgage" means this Mortgage between Grantor and Lender.

Note. The word "Note" means the promissory note dated April 19, 2021, **in the original principal amount of $1,590,000.00** from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. **NOTICE TO GRANTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.**

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Mortgage.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

STIVERS REALTY, L.C.

By: _____
EDWARD MARCEL STIVERS, III, Manager of STIVERS REALTY, L.C.

Signed, acknowledged and delivered in the presence of:

x _____
Witness

x _____
Witness

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LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF ALABAMA)
) ACKNOWLEDGMENT
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this April 6, 20 21 by EDWARD MARCEL STIVERS, III, Manager of STIVERS REALTY, L.C., a Missouri limited liability company, on behalf of the limited liability company.

_____ (SEAL)

Print Name William I. Eskridge

Notary Public in and for the State of Alabama at Large

My commission expires August 28, 2023 [AFFIX NOTARY SEAL HERE]

This Mortgage prepared/reviewed by:

Name: DANITA HARRIS DUDLEY
Title:
Address: 2500 WOODCREST PLACE
City, State, ZIP: BIRMINGHAM, AL 35209

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EXHIBIT "A"

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being at the Northeastern corner of the intersection of Clemson Road and Farrow Road, in the County of Richland, State of South Carolina, North of the City of Columbia being shown and designated as Parcel 5A, 7.299 acres upon plat prepared for Commodore Properties and Manning/Johnson Family Limited Liability Partnership by United Design Services, Inc. dated November 7, 2003, last revised November 13, 2003 and recorded in the Office of the Register of Deeds for Richland County in Record Book 898 at Page 1483.

Being the same property conveyed to Stivers Realty, L.C., a Missouri limited liability company by deed of RDS Associates, LLC recorded in the office of Register of Deeds for Richland County in Deed Book 2608, at Page 2234.

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Official Program Rules: Hyundai Accelerate Brand Program

HYUNDAI

Updated: 03/05/2021

Program Name: **Hyundai Accelerate Brand Program**

Program Period: January 07, 2020 – March 1, 2020
Program Relaunch Period: October 1, 2020 – June 30, 2026

RDR Deadline: July 1, 2026

Participating Dealerships: All Eligible Hyundai Dealerships*

Exclusive Facility Payment Amounts	Criteria	Payment Terms
"Construction Accrual" 1% MSRP (no freight)	Early Enrollment by 10/31/2020 and Start of Construction / Demolition by 12/31/2021	• Accrued for a maximum of 12 months from start of construction/demolition (by 12/31/2021) or until start of Construction Completion Payments, whichever is earlier; • Paid out when dealer achieves (1) construction completion and compliance certification for GDSI 2.0 ("Construction Completion") and (2) compliance with Facilities Usage Policy (at minimum, all Genesis customer touchpoints removed from Facility). • Dealer's Enrollment after 10/31/2020 but before 6/30/2021 will not qualify Dealer for Construction Accrual Payments.
"Construction Completion Payments" 1% MSRP (no freight)	Enrollment by 6/30/2021 and Start of Construction or Demolition by 3/31/2022 Construction Completion and GDSI 2.0 Compliance	• Accrued for a maximum of 6 months from construction completion and GDSI 2.0 compliance. • Paid out starting at Construction Completion for a maximum of 24 months or until 6/30/2026, whichever is earlier. • If Dealer does not comply with Facilities Usage Policy at time of Construction Completion, Dealer has 6 months to comply with the Policy. During that time, Construction Completion Payments will accrue. If Dealer does not comply with Facilities Usage Policy within 6 months, all accrued monies (including Construction Accrual and Exclusive Facility Payments) will be forfeited and dealer will not be

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		eligible going forward for Construction Completion Payments. • For Clarity, dealers will not concurrently accrue Construction Accrual and Construction Completion Payments.
"Exclusive Facility Payments" 1% MSRP (no freight)	Enrollment by 6/30/2021 and Start of Construction or Demolition by 3/31/2022 Exclusive Facility	• If Dealer does not comply with Facilities Usage Policy at time of Construction Completion, Dealer has 6 months to comply with the Policy. During that time, Exclusive Facility Payments will accrue. If Dealer does not comply with Facilities Usage Policy within 6 months, all accrued monies (including Construction Accrual and Construction Completion Payments) will be forfeited and dealer will not be eligible going forward for Exclusive Facility Payments. • Paid from the date of construction completion and compliance with Facilities Usage Policy (Exclusivity), until 6/30/2026.

Qualifying Dual Facility Payment Amounts	Criteria	Payment Terms
One-time Payment of $200,000	Enrollment by 10/31/2020 Start of Construction/Demolition by 12/31/2021 Construction Completion by 6/30/2026	Paid upon Construction Completion and GDSI 2.0 compliance.

A. Acknowledgement of Program Rules.

In order to be eligible to receive facility "Support Payments" under the Hyundai Accelerate Brand Program (the "Program") arising from the Construction Accrual, Construction Completion Payments and Exclusive Facility Payments, Dealer must comply with these Official Program Rules (these "Program Rules") and the Hyundai Accelerate Brand Program Enrollment Form (the "Form"). In the event of a conflict between the terms of these Program Rules and the Form, these Program Rules will control. These Program Rules supersede and replace any prior rules, regulations, offers, or agreements between HMA and Dealer relating to the construction and updating of Dealer's facility to the new Exclusive Global Dealership Space Identity ("GDSI 2.0").

B. Exclusive Facility.

1. Construction Accrual.

a. *Description:* Dealer must enroll in the Hyundai Accelerate Brand Program and start construction within the timeline specified below.

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b. *Requirements:*
   i. Dealer executes the Form on or before October 31, 2020.
   ii. Dealer is in, and maintains, compliance with its obligations set forth in these Program Rules.
   iii. Dealer submission and HMA approval of facility plans
   iv. Dealer starts construction and/or demolition of its Facility (as defined in the Facility Construction Phases below) on or before December 31, 2021.
   v. Construction is defined/verified as facility foundation footings poured.
   vi. Demolition is defined/verified as significant and substantial demolition of facility (fascia removal, roof and wall demolition, entrance reconfiguration, floor tile removal, ceiling removal, etc.).
   vii. Copy of building permit will be required
   viii. Date Stamp photos will be required for validation

c. *Payments:* If Dealer satisfies the Construction Accrual requirements, Dealer is eligible to receive 1% of MSRP (no freight) on all eligible vehicles at retail, which will be accrued in a non-interest bearing account, for a maximum period of twelve (12) months beginning on the date that Dealer proves start of construction and/or demolition (no later than December 31, 2021). Dealer will be eligible for payment of such accrual upon HMA's confirmation that Dealer's facility is constructed or renovated and confirmation that Dealer's facility complies with (a) HMA-Approved Final Plans or Agency-Approved Final Plans, as appropriate (as defined in these Program Rules), (b) GDSI 2.0 Facility Guideline requirements and design intent documents (including compliance with HMA's Facilities Usage Policy), and (c) the Payout Terms in Section D of these Program Rules.
   i. Any dealer that HMA deems under construction and branding to the GDSI 2.0 standards and that began to accrue funds under the Fast Start Commitment prior to Program pause on March 1, 2020 will maintain their accruals for January and February, based on the date of construction commencement, and will resume accrual of funds for the remainder of and up to 12 accrual months, or until GDSI 2.0 facility construction completion and compliance.
   ii. Any facility that completed construction between March 1, 2020 and October 1, 2020 will be eligible for the pay out of accrued funds, if applicable, and the start of Construction Completion payments upon program relaunch and facility GDSI 2.0 compliance certification, subject to Paragraph F.1.c.

2. Construction Completion Payments.

a. *Description:* Dealer must enroll in the Hyundai Accelerate Brand Program and start construction within the timeline specified below. Dealer must complete construction in compliance with GDSI 2.0 and in compliance with Dealer's approved construction plans.

b. *Requirements:*
   i. Dealer executes the Form on or before June 30, 2021.
   ii. Dealer submission and HMA approval of facility plans.
   iii. Dealer starts construction and/or demolition of its Facility (as defined in the Facility Construction Phases below) on or before March 31, 2022.
      a) Construction is defined/verified as facility foundation footings poured.
      b) Demolition is defined/verified as significant and substantial demolition of facility (fascia removal, roof and wall demolition, entrance reconfiguration, floor tile removal, ceiling removal, etc.).
   iv. Copy of building permit will be required.
   v. Date Stamp photos will be required for validation.
   vi. Dealer is in, and maintains, compliance with the Program Rules.
   i. Dealer informs HMA, in writing, when construction and/or renovation of its Facility is complete.

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ii. HMA confirms Dealer's compliance with (a) HMA-Approved Final Plans or Agency-Approved Final Plans, as appropriate, (as defined in the Program Rules) and (b) GDSI 2.0 Facility Guideline requirements and design intent documents.

c. *Payments:* If Dealer satisfies the Construction Completion and GDSI 2.0 compliance requirements, Dealer is eligible to receive 1% of MSRP (no freight) on all eligible vehicles at retail, which will be paid monthly to Dealer's Parts Account. If Dealer does not comply with the Facilities Usage Policy (Exclusivity) at the time of Construction Completion, Dealer has six (6) months to finish its other facility construction/renovation in order to comply with the Policy. During that time, Construction Completion Payments will accrue; except if Dealer does not take action to comply with Facilities Usage Policy within six (6) months, all accrued monies (including Construction Accrual and Exclusive Facility Payments) will be forfeited. Construction Completion payments will be made for a maximum of twenty-four (24) months or until June 30, 2026, whichever is earlier, subject to the Payout Terms in Section D of these Program Rules. For clarity, dealers will not concurrently accrue Construction Accrual and Construction Completion payments; and Dealer's enrollment after October 31, 2020 but before June 30, 2021 will not qualify Dealer for Construction Accrual Payments.

3. Exclusive Facility Payments.

a. *Description:* Dealer must enroll in the Hyundai Accelerate Brand Program and start construction within the timeline specified below. Dealer must be operating out of a facility that complies with HMA's current Facilities Usage Policy (Exclusivity).

b. *Requirements:*
   i. Dealer executes the Form on or before June 30, 2021.
   ii. Dealer starts construction and/or demolition of its Facility (as defined in the Facility Construction Phases above) on or before March 31, 2022.
   iii. Dealer is in, and maintains, compliance with the Program Rules.
   iv. HMA confirms that Dealer is operating out of a facility that complies with HMA's current Facilities Usage Policy (Exclusivity).

c. *Payments:* If Dealer satisfies the Exclusive Facility requirements, Dealer is eligible to receive 1% of MSRP (no freight) on all eligible vehicles at retail, which will be paid monthly to Dealer's Parts Account. If Dealer does not comply with the Facilities Usage Policy (Exclusivity) at time of Construction Completion, Dealer has six (6) months to finish its other facility construction/renovation in order to comply with the Policy. During that time, Exclusive Facility Payments will accrue; except if Dealer does not take action to comply with Facilities Usage Policy (Exclusivity) within six (6) months, all accrued monies (including Construction Accrual and Construction Completion Payments) will be forfeited. Exclusive Facility payments will be made from date of construction completion and compliance with the Facilities Usage Policy (Exclusivity), until June 30, 2026, subject to the Payout Terms in Section D of these Program Rules.

4. Exclusive Construction Phases.

Dealer agrees to implement GDSI 2.0 at the building(s) located at the Facility Address (which address must be the approved location in Dealer's Hyundai Dealer Sales and Service Agreement or the approved location of a Relocation Letter of Commitment) listed in the Dealer Information box on the Form (the "Facility"). Dealer acknowledges and agrees that the construction must be completed in accordance with these Program Rules and in the following phases:

a. Dealer shall undergo a facility survey conducted by HMA's authorized vendor (the "Initial Facility Survey") during the calendar quarter selected on the Form. In addition, Dealer acknowledges:

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i. The architect of Dealer's choosing ("Dealer Architect") and the Dealer's general contractor or builder must be present at the time that HMA's authorized vendor presents the final results of the Initial Facility Survey to Dealer (the "Final Presentation"); and

ii. Upon scheduling the Initial Facility Survey, Dealer must continue active facility construction and/or renovation advancement until construction and/or renovation completion and must comply with scheduled timing deadlines.

b. Dealer shall thereafter secure final construction-quality building plans ("Final Plans") within the timeframe set forth by HMA in these Program Rules.

c. Final Plans must be submitted for HMA's review and will be used as the basis for HMA's approval of the Dealer's proposed facility construction and/or remodeling, and if the Final Plans are compliant with the Program Rules and approved by HMA (the "HMA-Approved Final Plans") they will be incorporated into these Program Rules.

d. In the event that Dealer is unsuccessful in obtaining approval and permits from Dealer's local government regulatory agency for the HMA-Approved Final Plans, then:

i. Dealer must immediately and meaningfully notify (in writing) HMA of the basis for the rejection.

ii. HMA will then review the reasons for rejection and determine if the HMA-Approved Final Plans can be modified to accommodate both the local regulatory agency's requirements and the minimum GDSI 2.0 branding elements.

iii. If the HMA-Approved Final Plans can be modified to the satisfaction of HMA, Dealer and the local regulatory agency, such new plans (the "Agency-Approved Final Plans") will be incorporated into these Program Rules and supersede any previously approved plans. However, Support Payments may be pro-rated.

e. In the event that the HMA-Approved Final Plans cannot be modified to satisfy all parties, then:

i. the Dealer will become ineligible for the Program and Dealer's and HMA's obligations under these Program Rules shall immediately terminate and become null and void;

ii. neither HMA nor Dealer will have any further obligations under these Program Rules or the Form;

iii. HMA will not be liable to Dealer for any incurred costs or damages; and

iv. The Dealer's Hyundai Dealer Sales & Service Agreement will remain in full force and effect.

f. Dealer will inform HMA, in writing, when the construction and/or renovation of the Facility is complete. HMA will then conduct a Facility Compliance Review and inspect the construction and/or renovation to ensure compliance with the HMA-Approved Final Plans or Agency-Approved Final Plans, as appropriate, and branding requirements.

g. If the Facility Compliance Review determines that Dealer has implemented the construction and/or renovation in accordance with the HMA-Approved Final Plans or Agency-Approved Final Plans, as appropriate, and Dealer has met the GDSI 2.0 Facility Guideline requirements and design intent documents ("Certified Compliance with Exclusive GDSI 2.0"), Dealer will qualify for the Support Payments as set forth in these Program Rules.

h. Dealer must comply with the Facilities Usage Policy (Exclusivity), including, but not limited to, the removal of all GMA customer touchpoints from the Facility.

i. In the event that the Facility Compliance Review reveals any deviations and/or modifications that have not been previously approved by an authorized representative of HMA in writing,

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Dealer will be solely responsible for all costs associated with bringing the Facility into compliance with the agreed-upon design standards.

C. Dual Facility

1. Dual Facility Payments:

a. *Description:* Dealer must complete renovation of its Facility in partial compliance with Global Dealership Space Identity 2.0 and in compliance with Dealer's approved construction plans.

b. *Requirements:*

i. Dealer is in a PMA with New Vehicle Planning Guide below 350 and does not have exclusive, facing import-brand facilities in its PMA.

ii. Dealer executes the Form on or before October 31, 2020.

iii. Dealer starts construction and/or demolition of its Facility (as defined in the Facility Construction Phases above) on or before December 31, 2021.

iv. Dealer is in, and maintains, compliance with its obligations set forth in these Program Rules.

v. Dealer installs the following GDSI 2.0 brand elements, as structurally practical, by June 30, 2026:

a. Exterior signage;
b. Facility finishes, fixtures, furniture;
c. Hyundai Showroom separated by fixed wall from any other brand;
d. Separate entry to Hyundai showroom;
e. Separate Hyundai service drive;
f. Separate Hyundai customer touch points ((a) through (f), collectively, the "Dual Facility Requirements").

vi. Dealer informs HMA, in writing, when renovation of its Facility is complete.

vii. HMA confirms Dealer's compliance with the Program Rules.

c. *Payments:* If Dealer satisfies the Dual Facility Requirements by June 30, 2026, Dealer is eligible to receive a flat one-time payment of $200,000 (the "Dual Support Payment"), subject to the Payout Terms in Section D of these Program Rules.

2. Dual Facility Renovation Phases:

Dealer agrees to implement the Dual Facility Requirements at the Facility. Dealer acknowledges and agrees that the renovation must be completed in accordance with these Program Rules and in the following phases:

a. Dealer shall undergo an Initial Facility Survey during the calendar quarter selected on the Form. In addition, Dealer acknowledges:

i. The architect of Dealer's choosing ("Dealer Architect") and the Dealer's general contractor or builder must be present at the Final Presentation; and

ii. Upon scheduling the Initial Facility Survey, Dealer must continue active facility renovation advancement until renovation completion and must comply with scheduled timing deadlines.

b. Dealer shall thereafter secure final construction-quality renovation plans ("Final Dual Plans") within the timeframe set forth by HMA in these Program Rules.

c. Final Dual Plans must be submitted for HMA's review and will be used as the basis for HMA's approval of the Dealer's proposed facility remodeling, and if the Final Dual Plans are compliant with the Program Rules and approved by HMA (the "HMA-Approved Final Dual Plans") they will be incorporated into these Program Rules.

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d. In the event that Dealer is unsuccessful in obtaining approval and permits from Dealer's local government regulatory agency for the HMA-Approved Final Dual Plans, then:
   i. Dealer must immediately and meaningfully notify (in writing) HMA of the basis for the rejection.
   ii. HMA will then review the reasons for rejection and determine if the HMA-Approved Final Dual Plans can be modified to accommodate both the local regulatory agency's requirements and the Dual Facility Requirements.
   iii. If the HMA-Approved Final Dual Plans can be modified to the satisfaction of HMA, Dealer and the local regulatory agency, such new plans (the "Agency-Approved Final Dual Plans") will be incorporated into these Program Rules and supersede any previously approved plans. However, the Dual Support Payment may be pro-rated.

e. In the event that the HMA-Approved Final Dual Plans cannot be modified to satisfy all parties, then:
   i. the Dealer will become ineligible for the Program and Dealer's and HMA's obligations under these Program Rules shall immediately terminate and become null and void;
   ii. neither HMA nor Dealer will have any further obligations under these Program Rules or the Form;
   iii. HMA will not be liable to Dealer for any incurred costs or damages; and
   iv. The Dealer's Hyundai Dealer Sales & Service Agreement will remain in full force and effect.

f. Dealer will inform HMA, in writing, when the renovation of the Facility is complete. HMA will then conduct a Facility Compliance Review and inspect the renovation to ensure compliance with the HMA-Approved Final Dual Plans or Agency-Approved Final Dual Plans, as appropriate, and branding requirements.

g. If the Facility Compliance Review determines that Dealer has implemented the renovation in accordance with the HMA-Approved Final Dual Plans or Agency-Approved Final Dual Plans, as appropriate, and Dealer has met the Dual Facility Requirements ("Certified Compliance with Dual Facility"), Dealer will qualify for the Dual Support Payment as set forth in these Program Rules.

h. In the event that the Facility Compliance Review reveals any deviations and/or modifications that have not been previously approved by an authorized representative of HMA in writing, Dealer will be solely responsible for all costs associated with bringing the Facility into compliance with the agreed-upon design standards.

D. Payout Terms

1. Exclusive Facility.

Eligible dealers will accrue Support Payments, as described in the table above and Sections B.1.C, B.2.C., and B.3.C, and which will be paid, upon Dealer's achievement of the criteria described therein, and upon compliance with the Facilities Usage Policy. Applicable payments will apply to all eligible Hyundai vehicle sales during the program period. Payments will be made in the first week of the following month on the dealer parts statement. In addition to any right of set off provided by law, all payments due Dealer shall be considered net of indebtedness of Dealer to HMA, and HMA may deduct any amounts due or to become due from Dealer to HMA or any amounts held by HMA from any sums or accounts due from HMA to Dealer.

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2. Dual Facility.

The Dual Support Payment will be made in the month following HMA's determination that Dealer is Certified Compliance with Dual Facility. In addition to any right of set off provided by law, all payments due Dealer shall be considered net of indebtedness of Dealer to HMA, and HMA may deduct any amounts due or to become due from Dealer to HMA or any amounts held by HMA from any sums or accounts due from HMA to Dealer.

E. Dealer Construction Acknowledgements

1. Dealer acknowledges and agrees that undertaking the construction and/or remodeling of its Facility and the performance of Dealer's other obligations under these Program Rules is voluntary and at Dealer's sole business risk including Dealer is voluntarily agreeing for separate and reasonable consideration. HMA is not responsible for any impact that the construction at the Facility nor the implementation of the Program will have on Dealer's operations.
2. All construction and/or remodeling must be in accordance with the HMA-Approved Final Plans (or HMA-Approved Final Dual Plans), which Dealer agrees will incorporate the GDSI 2.0 guideline requirements.
3. Dealer acknowledges that HMA has specifically made no representations or promises to Dealer concerning the positive and/or negative impact that the implementation of the Program will have on Dealer's HMA operations. Dealer is knowingly and voluntarily assuming the obligations set forth in these Program Rules based solely upon Dealer's assessment of the economic, business, and market conditions for HMA products, and as such the Facility construction/renovations are reasonable and justified.
4. Dealer acknowledges and agrees that previous facility surveys, Design Intent Documents (DID's), and cost estimates are not a part of and do not transfer to the Program. Dealer must sign a new Exclusive GDSI 2.0 Dealer Branding Form (GDSI 2.0 DBF) and must adhere to all aspects of the HMA Exclusive GDSI 2.0 branding manual to participate in the Program. Any previous requirements and/or permitted exceptions are no longer valid within the Program.

F. Required Timeline.

1. Dealer acknowledges and agrees that time is of the essence in these Program Rules, and Dealer must strictly meet all deadlines set forth herein and the Form, including:
   a. Enroll by October 31, 2020 with an executed Form to qualify for Construction Accrual Payments, Construction Completion Payments, and/or Exclusive Facility Payments; or enroll by June 30, 2021 with an executed Form to qualify for Construction Completion Payments and/or Exclusive Facility Payments.
   b. Begin Facility Construction or Demolition by December 31, 2021 to qualify for Construction Accrual Payments, Construction Completion Payments, and/or Exclusive Facility Payments; or begin Facility Construction or Demolition by March 31, 2022 to qualify for Construction Completion and/or Exclusive Facility Payments.
      i. Facility Construction is defined/verified as facility foundation footings poured.
      ii. Facility Demolition is defined/verified as significant and substantial demolition of facility (fascia removal, roof and wall demolition, entrance reconfiguration, floor tile removal, ceiling removal, etc.).
      iii. Copy of building permit will be required
      iv. Date Stamp photos will be required for validation.
   c. Complete construction by June 30, 2026, or by such date as necessary to qualify for Support Payments or the Dual Support Payment. If an exclusive Dealer does not comply with Facilities Usage Policy at time of Construction Completion, Dealer has six (6) months to finish its other facility construction/renovation in order to comply with the Policy. During

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that time, Construction Completion Payments and Exclusive Facility Payments will accrue. If an exclusive Dealer does not take action to comply with Facilities Usage Policy within six (6) months of construction completion, all accrued monies will be forfeited.

d. Maintain post-construction compliance with the Program Rules immediately following Certified Compliance with Exclusive GDSI 2.0 or Certified Compliance with Dual Facility, as applicable.

2. If Dealer believes that it will need an extension to any Program deadlines, Dealer must submit a request for an extension, in writing, to HMA no later than two (2) weeks before the deadline. Such request must include a detailed explanation of the reason or cause for delay along with a revised, projected deadline. HMA may grant such an extension, in its sole discretion, provided that such reason for the extension is weather related or beyond the reasonable control of Dealer.

G. Eligible Vehicles.

1. The following vehicles may be used to calculate payment under this Program:
   a. New and unused Hyundai vehicles sold during the Program Period and RDR'd during the RDR Period
   b. Vehicles reported as sales type R/M/O
2. Dealers located in the state of North Carolina are not eligible to participate in the Program and are not permitted to receive Support Payments or the Dual Support Payment. Further, any Dealer desiring to participate in the Program may not be in material violation of their Hyundai Dealer Sales and Service Agreement at the time of enrollment (*e.g.* floor plan, out of trust).

H. Ineligible Vehicles.

1. Dealer is not eligible for payment under this Program for the following vehicles:
   a. Vehicles not submitted in compliance with HMA's current rules and regulations regarding sales reporting.
   b. Vehicles that have received Final Pay
   c. Fleet Vehicles
   d. Vehicles going into SRC service
   e. SRC-CPO Status
   f. Vehicles that are not listed under "Eligible Vehicles"
   g. Vehicles RDR'd after the RDR period

I. Vehicle RDR Cancellations.

RDR cancellations will automatically trigger chargebacks on all incentives earned on the cancelled unit.

J. Vendors.

HMA has designated approved vendors as the source from which select elements may be procured and the identities of these vendors will be given to Dealer at the time of the Final Presentation. Dealer agrees to comply with all the terms and conditions from these vendors concerning the purchasing of such GDSI 2.0 elements, including, but not limited to, the prompt payment for goods and services delivered. In the event that Dealer fails to fulfill its financial obligations to these vendors, HMA reserves the right, but is not obligated, to withhold from Dealer's Support Payments, any amount due and owing to these vendors. Notwithstanding the foregoing and anything to the contrary in these Program Rules, if applicable law allows Dealer to select venders of their own choosing, Dealer may utilize a vender of their choice solely as permitted by HMA to the extent necessary for HMA to comply with such applicable law.

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K. Withdrawal from the Program.

Dealer acknowledges and agrees that undertaking the construction and/or remodeling of its facility and the performance of Dealer's other obligations under these Program Rules is voluntary and at Dealer's sole business risk including Dealer is voluntarily agreeing for separate and reasonable consideration. Dealer may withdraw from the Program at any time upon written notice to HMA, at which point the Dealer will immediately become ineligible to participate in the Program and Dealer's and HMA's obligations under these Program Rules shall immediately terminate and become null and void. Further, upon Dealer's withdrawal, Dealer agrees that (a) neither HMA nor Dealer will have any further obligations under these Program Rules or the Form; (b) HMA will not be liable to Dealer for any incurred costs or damages; any amounts accrued by Dealer under the Program will be forfeited and Dealer may be charged back for any Support Payments or Dual Support Payments received; and (c) Dealer's Hyundai Dealer Sales & Service Agreement will remain in full force and effect. Any actions taken, expenditures made, or any commitments assumed by Dealer in attempting to meet the requirements of these Program Rules and/or participate in the Program, and any other matters contemplated, are done at Dealer's sole risk and responsibility, and HMA shall not be liable to Dealer or any other persons for any sums expended or any commitments or obligations incurred by Dealer in attempting to meet these conditions prior to Dealer's withdrawal.

L. Program Violations and Ineligibility.

1. Dealer acknowledges and agrees that the following events are a material violation of the Program Rules, and upon the occurrence of any of the following events, Dealer must repay to HMA, within ninety (90) days of written notification of the breach, any and all Support Payments (or Dual Support Payment) that Dealer has received from HMA pursuant to these Program Rules:
    a. The modification, altering, amendment, addition or change to the newly constructed and/or renovated Facility (the "New Facility"), including changing the appearance and layout of the New Facility, until a new HMA facility program is approved and communicated to Dealer unless Dealer obtains the prior written consent of an authorized representative of HMA.
    b. Dealer Voluntarily Terminates its HMA Dealer Sales & Service Agreement or Dealer has its HMA Dealer Sales & Service Agreement terminated by HMA, either occurring within ten (10) years from the date of Certified Compliance with Exclusive GDSI 2.0 or the Dual Facility Requirements, as applicable.
    c. Dealer's failure to notify HMA, in writing, of any delays that HMA does not agree in writing to an extension of, which will be verified by an authorized vendor as weather related or beyond the control of the dealer, which notice shall include a detailed explanation of the reason or cause for the delay along with a revised, projected completion date.
    d. Any deviation from any of the HMA-Approved Final Plans or Agency-Approved Final Plans (or dual-equivalent plans), as appropriate, (including agreed upon plans in compliance with HMA's Facilities Usage Policy) and minimum design standards, including but not limited to removal of all GMA customer touchpoints from the Facility, site plans, elevations, interior lay-outs, styles, colors and materials, or the terms and conditions of these Program Rules, which Dealer cannot or refuses to bring the Facility

into compliance with the designated specifications, unless waived in writing by an authorized representative of HMA.

e. Dealer's material breach of the requirements in Dealer's Hyundai Dealer Sales and Service Agreement.

M. Repayment; Chargeback.

If Dealer does not repay the Support Payments (or Dual Support Payment) as required in these Program Rules within ninety (90) days, then HMA will charge-back Dealer's Parts Statement in the amount of the Support Payments (or Dual Support Payment) owed to HMA.

N. Enrolled Dealers Engaging in Buy/Sell Transactions.

1. If Dealer closes on a Buy/Sell Agreement to sell its Hyundai Dealership to a third party or other purchaser during the construction and/or renovation of the Facility, all funds accrued pursuant to the Construction Accrual Process (as defined below) will be paid to the new dealer of record upon full GDSI 2.0 Facility branding completion and compliance verification, for the entirety of the accrual period and HMA will be relieved of any obligation to pay selling Dealer for such amounts; provided that the purchaser agrees, in writing, and in a form acceptable to HMA, to honor all obligations in these Program Rules and complies with all obligations of these Program Rules. After the Construction Accrual Process, the purchaser will be eligible for Support Payments in accordance with these Program Rules.
2. Dealer further acknowledges and agrees that:
    a. In the event that Dealer enters into a Buy/Sell Agreement to sell its Hyundai Dealership within ten (10) years from the date of Certified Compliance with Exclusive GDSI 2.0 (or Dual Facility Requirements), the purchaser identified in such Buy/Sell Agreement will agree as a condition precedent to closing on the Buy/Sell Agreement in writing, and in a form acceptable to HMA, to honor all obligations in these Program Rules as applicable. If the purchaser will not agree, in writing, to honor these Program Rules, then Dealer must repay to HMA all Support Payments (or Dual Support Payment) that Dealer has received from HMA pursuant to these Program Rules, as a condition precedent to HMA consenting to the Buy/Sell transaction.
    b. If Dealer closes on a Buy/Sell Agreement within 24 months of its Certified Compliance date, then Dealer forfeits any remaining Certified Compliance Support Payments and purchaser is not eligible to receive such payments.
    c. Dealer agrees that in the event that Dealer enters into a Buy/Sell Agreement to sell its Hyundai Dealership during the Construction Accrual timeline of the Program, Dealer will lose all right to any accrued funds and the new dealer of record becomes eligible to receive such accrued funds for the entirety of the accrual period, subject to compliance with these Program Rules.
3. HMA agrees that in the event that purchaser agrees to honor all obligations in these Program Rules (e.g., exclusivity and no alterations) and purchaser later breaches the Buy/Sell Agreement, purchaser must repay to HMA all Support Payments that purchaser has received from HMA pursuant to these Program Rules. Purchaser will not be liable to repay Support Payments made to Dealer.

O. Terms and Conditions.

1. Reservation of Rights
    a. HMA reserves the right to amend, cancel, suspend or revoke the Program and/or these Program Rules at any time, for any reason, including but not limited to significant changes in economic, financial, local market conditions, government orders, events outside the

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reasonable control of HMA and dealer, and such changes will be effective as set forth therein, and each participating dealer agrees that it will make no claim to HMA for lost opportunity or anticipated earnings under a cancelled program or revised or cancelled program rules.

b. HMA reserves the sole right to interpret these Program Rules and shall not be bound by any previous interpretations made by HMA before or during the Program.
c. If any legal or administrative action is brought, pending, or threatened in any state(s) to prohibit or direct HMA on the Hyundai Accelerate Brand Program, HMA reserves the right to suspend any and all payments and/or modify or cease to offer the Hyundai Accelerate Brand Program, in its sole discretion, with no liability whatsoever to any dealer.
d. If HMA is prohibited by any federal, state or local law, regulation, or determination by any judicial or administrative body from continuing the Hyundai Accelerate Brand Program in any or all state(s), HMA, in its sole discretion, shall have the right to terminate the Hyundai Accelerate Brand Program and HMA will have no liability whatsoever to any dealer.

2. Dealers must comply with all facility policy guidelines established by HMA, including, but not limited to, removal of all GMA customer touchpoints from the Facility, the Facilities Usage Policy, and such facility policy guidelines are hereby incorporated by reference into these Program Rules.
3. Dealers must comply with all HMA policies regarding submission of vehicle sales and submission of incentive claims in order to qualify for any payments under the Hyundai Accelerate Brand Program.
4. Dealer must submit in a timely manner, an exclusive Hyundai Financial Statement as required by the Hyundai Dealer Sales & Service Agreement.
5. Dealer agrees and acknowledges that any monies earned through the Program are dealer assistance and not provided for reimbursement of actual facility branding costs.
6. All development and implementation costs, including design, construction, remodeling, licenses, permits, administration, as well as any and all other expenses, obligations and liabilities incurred by Dealer, are the sole responsibility of Dealer. Dealer is also solely responsible to ensure the quality of the work performed and that materials used are in accordance with HMA's specifications, except as to those materials purchased through HMA's specified vendors.
7. Dealer acknowledges that HMA's only obligations to Dealer under the Program are specifically set forth in these Program Rules; and Dealer further acknowledges that HMA has made no representations, promises, or warranties that Dealer's operations will be financially successful in either the short or long-term. Any actions taken, expenditures made, or any commitments assumed by Dealer in attempting to meet the requirements of these Program Rules and/or participate in the Program, and any other matters contemplated, shall be at Dealer's sole risk and responsibility, and HMA shall not be liable to Dealer or any other persons for any sums expended or any commitments or obligations incurred by Dealer in attempting to meet these conditions.
8. This Program and these Program Rules are not a part of, are not merged with, and do not in any way modify or amend the Hyundai Dealer Sales and Service Agreement and Standard Provisions currently in effect between Dealer and HMA. These Program Rules and the Form constitute Dealer's and HMA's entire agreement concerning the subject matter herein and supersede all prior negotiations, representation, statements, understandings, correspondence and agreements relating to such subject matter.
9. Dealer agrees and acknowledges that the terms and conditions of the Program are confidential.

If you have any questions or require additional information, please contact your regional office.

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STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND** STIVERS BROTHERS AUTOMOTIVE, INC., Plaintiff, v. W. WARNER PEACOCK and PEACOCK AUTOMOTIVE, LLC, Defendants.	)	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT** C/A NO. 2020-CP-40-01934 **DEFENDANTS' MOTION TO ALTER OR AMEND THE JULY 31, 2023 ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

TO: PLAINTIFF AND THEIR ATTORNEYS J. GREGORY STUDEMEYER, ESQ., RYAN STUDEMEYER, ESQ., AND J. MICHAEL BAXLEY, ESQ.:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorneys for Defendants, W. Warner Peacock and Peacock Automotive, LLC, (Peacock) will move before the Honorable B. Alex Hyman, at such time and place as Judge Hyman may designate, pursuant to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure, to reconsider, alter, or amend his July 31, 2023 Order, granting Stivers' Motion for Summary Judgment. Peacock's Motion is based on the following:

1. Clarification is needed that the Court's July 31st Order sets forth one aspect of the measure of damages for a breach of contract and does not explicitly eliminate other legal principles, including the doctrine of mitigation and contractual limitation of damages.

2. The Court overlooks that the "[t]he measure of damages for breach of contract is the loss actually suffered by the contractee as the result of the breach." *Rd., LLC v. Beaufort Cnty.*, 433 S.C. 164, 175, 857 S.E.2d 371, 376 (Ct. App. 2021). Clarification of the Court's Order is needed that Stivers' burden to prove any loss it actually suffered has not been altered. A party proves damages by showing an actual loss that would not have been incurred but for the

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defendant's breach of the contract. *Drews Co. v. Ledwith-Wolfe Assocs.*, 296 S.C. 207, 213, 371 S.E.2d 532, 535 (1988). In addition, a plaintiff must demonstrate any loss was a natural and foreseeable consequence of the breach that had been reasonably contemplated by the parties at the time the contract was made. *Id.*

3. The Court's July 31, 2023 Order takes one factor that may be considered by a jury to determine the actual loss suffered by a plaintiff for an alleged breach of contract and erroneously makes it the sole factor to be considered.

4. The Court overlooked not only the legal duty of mitigation which creates an issue of fact for the jury as to Stivers' damages,[1] but also that the APAs contain contractual language that may limit the proper measure of damages, including a limitation to the Escrow Deposit.[2] Clarification of the Court's July 31st Order is therefore needed that the difference between the contract price and the fair market value at the time of the breach is not the sole measure of damages for an alleged breach of contract, but one factor that may be properly considered by a jury.

5. The Court overlooks the fact that South Carolina Appellate Courts have found evidence of sale prices post-breach to be admissible as to the fair market value of property. *See Benya v. Gamble*, 282 S.C. 624, 632, 321 S.E.2d 57, 62 (Ct. App. 1984) (allowing evidence of the sale price eighteen months after the contract was breached).

6. The Court overlooks that it is solely for a jury to determine the weight and credibility to be given to any evidence of post-termination profits or conditions. *See State v. Battle*, 408 S.C. 109, 119, 757 S.E.2d 737, 742 (2014) ("The task of determining the weight of the

[1] "It is the undoubted general rule that it is the duty of the owner of the property, which is injured by the negligence of another, to use reasonable means to minimize the damages." *Newman v. Brown*, 228 S.C. 472, 480, 90 S.E.2d 649, 653 (1955). "The duty to mitigate losses applies to contracts." *Cisson Constr., Inc. v. Reynolds & Assocs., Inc.*, 311 S.C. 499, 503, 429 S.E.2d 847, 849 (Ct.App.1993).

[2] South Carolina law allows parties to prospectively set an amount of damages for breach through the inclusion of a liquidated damages provision. *Erie Ins. Co. v. Winter Constr. Co.*, 393 S.C. 455, 460, 713 S.E.2d 318, 321 (Ct. App. 2011).

evidence lies within the exclusive province of the jury."). Peacock presented evidence of the value of the Chevrolet dealership when it was subsequently sold, and the value of other dealerships sold in the same market. These are issues of fact for a jury to decide. "The weight and credibility of evidence presented at the hearing is a [trial] matter within the province of the trier of fact." *See S.C. Cable Television Ass'n. vs. S. Bell Tel. & Tel. Co*., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992).

7. Peacock presented at least a scintilla of evidence that creates a genuine issue of material fact for a jury as to whether post-termination values are relevant to establish the fair market value of the dealership. In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. *Hancock v. Mid-S Mgmt. Co.,* 381 S.C. 326, 330, 673 S.E. 2d 801, 803, 2009.

8. Rather than deciding the issue in the pre-trial stage, the issue should be addressed at trial. "The trial court must determine the law to be charged based on the evidence [presented] at trial." *Cook v. State*, 415 S.C. 551, 556, 784 S.E.2d 665, 667 (2015) (quoting *State v. Smith*, 363 S.C. 111, 115, 609 S.E.2d 528, 530 (Ct. App. 2005).

9. In reaching its decision, the Court assumed facts not in evidence. Stivers did not present evidence to the Court regarding car sales or customer traffic to dealerships in March of 2020. Nor did Stivers present any evidence that the Paycheck Protection Program subsequently altered the market to the extent that it would be unfair to consider post-termination sales. Additionally, any specific post-termination sales proffered by Peacock would have to be evaluated on an individual basis to determine whether they were relevant to show Stivers' fair market value at the time the APAs were terminated. The Court erred in assuming facts that were not in evidence.

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10. A genuine issue of material fact exists for a jury to weigh any testimony regarding post-termination sales of dealerships to determine whether they are credible evidence of the fair market value of Stivers dealership at the time the APAs were terminated.

11. The issue of the proper measure of damages for a breach of contract is not appropriate for a declaratory judgment as this issue does not declare Stivers' rights or status nor does it establish the legal relationship between the parties. See S.C. Code § 15-53-20.

12. The issue of the measure of damages does not determine the construction or validity of a contract involved in the present case, and thus is not appropriate for declaratory relief. See S.C. Code 15-53-30.

13. The Court may refuse to render a declaratory judgment when the judgment would not terminate the uncertainty or controversy giving rise to the proceeding. S.C. Code Ann. § 15-53-70. This is an advisory opinion, which should be reserved for the Trial Court when this matter is reached.

THEREFORE, Peacock moves this Court for an Order altering or amending its July 31, 2023 Orders granting Stivers' Motion for Summary Judgment.

August 10, 2023

Respectfully submitted,

s/Bradford N. Martin
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ELECTRONICALLY FILED - 2023 Aug 10 12:06 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND** STIVERS BROTHERS AUTOMOTIVE, INC., Plaintiff, v. W. WARNER PEACOCK and PEACOCK AUTOMOTIVE, LLC, Defendants.	)	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT** C/A NO. 2020-CP-40-01934 **DEFENDANTS' MOTION TO ALTER OR AMEND THE JULY 31, 2023 ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

TO: PLAINTIFF AND THEIR ATTORNEYS J. GREGORY STUDEMEYER, ESQ., RYAN STUDEMEYER, ESQ., AND J. MICHAEL BAXLEY, ESQ.:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorneys for Defendants, W. Warner Peacock and Peacock Automotive, LLC, (Peacock) will move before the Honorable B. Alex Hyman, at such time and place as Judge Hyman may designate, pursuant to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure, to reconsider, alter, or amend his July 31, 2023 Order, denying Peacock's Motion for Summary Judgment. Defendants' Motion is based on the following:

1. Stivers does not dispute that it has a duty to mitigate any damages. "It is the undoubted general rule that it is the duty of the owner of the property, which is injured by the negligence of another, to use reasonable means to minimize the damages." *Newman v. Brown,* 228 S.C. 472, 480, 90 S.E.2d 649, 653 (1955). "The duty to mitigate losses applies to contracts." *Cisson Constr., Inc. v. Reynolds & Assocs., Inc.*, 311 S.C. 499, 503, 429 S.E.2d 847, 849 (Ct.App.1993).

2. Stivers does not dispute that it refused Peacock's offers to purchase, on more favorable terms, after March 27, 2020. Rather, it only questions whether the offers were made in good faith.

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3. Stivers itself produced the following evidence:

a. it sold the Chevrolet dealership in October of 2020 for $500,000 more than the original APA price, mitigating any damages as to Chevrolet;
b. it realized $265,398 in operating net profits for the Chevrolet store for the period of April, 2020 – September, 2020, prior to the sale of the Chevrolet dealership; and
c. it realized more than $5.8 million in net profits at the Hyundai/Genesis dealerships from April 2020 through March, 2022 that would not have been realized if the dealerships were purchased by Peacock in April of 2020.

Finally, Stivers experienced a significant increase in the value of the Hyundai/Genesis dealerships, almost doubling the value by choosing to keep the dealerships.

4. Taking this argument in the light most favorable to Stivers and finding that it has made efforts to mitigate, any damages it claims must be reduced by the substantial profits Stivers generated by retaining the Hyundai/Genesis dealerships. Even taken in the light most favorable to Stivers, these profits exceed the recoverable damages it can claim as a matter of law.

5. Stivers' expert witness opines that the damages incurred as a result of the termination of the APAs was $2,300.000 as of March 30, 2020. This is offset completely by Stivers' $5.8 million in profits realized as a result of retaining the dealerships.

6. The Court overlooks that regardless of whether a jury were to find that Stivers failed to mitigate its damages by retaining the Hyundai/Genesis dealerships or that its retention was proper mitigation, there is no issue of material fact for the jury as to damages because the only reasonable inference from either conclusion is that Stivers suffered no damages as a result of the termination of the Hyundai/Genesis APA. ". . . [I]f the evidence is susceptible of only one reasonable inference, the question is no longer one for the jury but one of law for the Court." *Hancock v. Mid-South Management, Co., Inc*., 370 S.C. 131, 634 S.E.2d 12, 14 (Ct. App. 2006) *quoting Ward v. Zelinski*, 260 S.C. 229, 232, 195 S.E.2d 385, 387 (1973).

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7. As a matter of law, Stivers cannot recover for costs incurred by another entity as a matter of law. *See Sossamon v. Nationwide Mut. Ins. Co*., 243 S.C. 552, 135 S.E.2d 87 (1964) (finding a husband could not recover for damage to the station wagon owned by his wife.). Stivers presented no evidence to refute the following:

a. Any costs in the form of additional rent, property taxes, and insurance were incurred by Stivers Realty, LC, not Stivers Brothers Automotive, Inc.;
b. Stivers Realty, not the Plaintiff, purchased the property to which Stivers relocated the Hyundai and Genesis dealerships and is the entity indebted on the mortgage for construction of the new facilities; and
c. That Stivers incurred acquisition costs for the purchase of another dealership. In fact, the documents produced show that E.M. Stivers, Inc., and not Plaintiff, purchased the dealership.

8. Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the non-moving party cannot simply rest on mere allegations or denials contained in the pleadings. *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E. 2d 432, 438 (Ct. App. 2003). The nonmoving party must come forward with specific facts showing there is a genuine issue for trial. *Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 220, 616 S.E.2d 722; 730 (Ct. App. 2005).

THEREFORE, Peacock moves this Court for an Order altering or amending its July 31, 2023 Orders denying its Motion for Summary Judgment.

August 10, 2023

Respectfully submitted,

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STATE OF SOUTH CAROLINA) SOUTH CAROLINA CIRCUIT COURT 5
COUNTY OF RICHLAND) DOCKET NO. 2020-CP-40-01934

STIVERS BROTHERS AUTOMOTIVE,)
Plaintiff,)
versus)
)
PEACOCK AUTOMOTIVE,)
Defendant.)

H E A R I N G
BEFORE THE HONORABLE B. ALEX HYMAN

DATE: May 23, 2023
TIME: ***
LOCATION: South Carolina Circuit Court 5

TRANSCRIBED BY: Natasha Barrientos

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EXHIBITS

(None marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

THE COURT: This is defense's motion to seal. I'm not sure who's going to argue Mr. Martin, you or -- or Ms. Teer, but I'm happy to hear from you.

MR. MARTIN: All right. May please I the Court?

MR. BAXLEY: Judge, excuse me, Your Honor.

THE COURT: Yes -- yes.

MR. BAXLEY: Mr. Martin (inaudible).

THE COURT: (Inaudible).

MR. BAXLEY: May I break in and just suggest one thing if that's possible?

THE COURT: Yes.

MR. BAXLEY: There -- there are actually, I believe four motions pending in this case. And I wondered if we might talk a moment among ourselves about how to proceed today to give you an idea rather -- rather than get engaged here and take an hour of your time, if not more, that perhaps we can give you a little bit of an overview picture that will let you decide what might be the most efficient way to go forward.

THE COURT: I'm happy to hear that I have read through the motions as well as some memos and opposition and in support. So I've got a little bit of a -- a background on it, but I'm -- I'm always happy to hear more.

MR. MARTIN: And I would -- I would suggest that we just do it in the order that you've listed them, Your Honor.

That's how I prepared. And it -- and the first motion is very simple, and it really applies to the second motion, which is our motion for partial summary judgment.

And I think all of the facts that you need to know, if -- if you've read the memos, you're -- you're ready to go. And it'd be -- be more efficient to just start with the motions in my humble but correct opinion as a friend of mine likes to say.

MR. BAXLEY: Judge, I realized that Richland, CP & J is such a burden for a traveling, Judge, because of the large cases like this state appeals where they used to bring the docket in or the file in on a dolly. Now, I guess they gave it to you in a -- in a -- in gigabytes. But there's so much here that is before you today. I thought we might shorten it, but I completely defer to whatever you wish to do, and how you wish to proceed. This is your court, and we respect that.

THE COURT: Well, Judge Baxley -- I -- Mike Baxley, excuse me. I -- I'm stuck in old ways, but I -- I certainly appreciate what you said. And -- and I'm a little bit old school. I had my -- I have my -- my -- law clerk brief all the motions and print everything out because I can't keep it all straight in an open window on my computer. I -- I tend to like to have paper in front of me, so I -- I appreciate that. Why don't we do this? It -- it's on the roster like

it is. I do have somewhat of a background on it.

MR. BAXLEY: Very good.

THE COURT: Mr. Baxley, you may be correct in -- in your finding, but I've got time for you guys. So let's -- let's move from there.

Mr. Martin, happy to hear from you.

MR. MARTIN: Thank you, Your Honor. First of all, this motion for sealing really deals with our motion for partial summary judgment. This case involves a car dealership, two car dealerships in Columbia. We have two very sophisticated parties. They were negotiating for a long time. They signed an APA for a Chevy dealership in Columbia, and a Hyundai in Genesis.

Now, Hyundai in Genesis used to be one dealership, but now Hyundai is split it into two. But we're going to refer to it as Hyundai just for convenience. So we had two APAs signed in January. Our defense says, is that they were supposed to operate in the normal course of business. They didn't. In fact, their expert even says in his report that they were ready to close and they operated as if they were going to close rather than sell and keep it as an ongoing business.

So that is our basic defense. But as far as the motion for sealing, what we have, Your Honor, is we have two affidavits that have been filed on behalf of our client in

our motion for partial summary judgment. And in those affidavits, there's just two numbers that have been blacked out.

The -- and what happened was, is a couple of years after this sale went south, my client sold 20 something dealerships to AutoNation. And AutoNation is the country's largest owner of car dealers. They're on the New York Stock Exchange.

And we signed a confidentiality agreement with them almost two years later when we sold, saying we would not disclose the prices of the various dealerships. But the issue of the price of the Hyundai dealership say our client already had a Hyundai dealership in Columbia.

So since we sold it about a year and a half after this particular situation where we were going to buy a Hyundai dealership, a second Hyundai dealership, the price that it's sold at is relevant in determining what the fair market value of the Columbia Stivers Hyundai dealership was.

So because we've signed this confidentiality agreement, we want that to be sealed and only for you to see it, so you can make your decision on the motion for partial solemn judgment. Now, we have cited a case of May versus Medtronic, which was a Judge Herlong case where he took some traditional confidential business records and said that they should be protected.

We also have a second case, which we didn't cite in our brief, but it's also a federal court case from Judge Herwell in April of 2020 called Lanzetta, L-A-N-Z-E-T-T-A, where Judge Herlong himself also agreed that it was the kind of thing that should be protected from the public view.

Now, the APAs that were signed in this case started in January of 2020. And the Stivers would -- who are the plaintiffs who brought the lawsuit against Peacock, agreed to a confidentiality agreement in those APAs for the sale of the Chevy store and the sale of the Honda store -- Hyundai store.

So it is clear that all people in this industry understand that buying and selling car dealerships is a confidential situation. And you don't want your competitors to know about it. Now, Judge Herlong and Judge Harwell, set forth the public -- the federal rule regarding whether or not you have a right to seal something.

The first one is, public notice. There has to be public notice. And our filing this motion a year ago puts the public on notice. And both Judge Herlong and Harwell, held that just filing the motion puts the public on notice.

We've not had any objection from the public. In order to seal just these two numbers, we're actually going to put the -- and have put in both affidavits. We just have blacked out the numbers on what actually the Hyundai store in Columbia sold for.

So the second thing is, is there are less drastic alternative available. And in this situation, there isn't. If -- if the number is out there and the competitors know what AutoNation paid for the Hyundai dealership in Columbia from Peacock, the cat's out of the bag. So there is no less drastic alternative.

And then the third requirement is that you're supposed to make factual findings that support the decision to seal just the number for the sale of the Hyundai store in Columbia. And those are number one, that this is an industry-wide practice. Stivers themselves agreed to the confidentiality in the original sales of both the Chevy store and their Hyundai store.

We have in the affidavits from Jim Joyner, and one of the co-owners, Jay Brennan, that this is something that is normally confidential. And their lawyer, Mr. McBride from Alabama knew this, and that's why he agreed to put it in the original APAs.

So it's a pretty simple motion, pretty straightforward, and we are -- we are asking the Court simply to let us seal this. Now, interestingly enough, at the beginning of this case, Stivers agreed to keep it confidential, but then once push came to shove, they decided to file an 18-page memo in opposition and -- and fight it.

So here we are. And we have offered to make this

information available to you under a confidentiality agreement. We have sent that to Stivers. They can certainly know what this number is, and they certainly need it in order to defend whatever the value is.

But the whole purpose of the motion to seal is to simply keep a very confidential piece of information away from our competitors. And we think we meet the test of both Judge Herlong and Judge Harwell in the May case and the Lanzetta case.

THE COURT: Thank you, Mr. Martin.

Mr. Baxley, Mr. Studemeyer, any response?

MR. BAXLEY: Yes -- yes, sir. Judge, again, Mike Baxley here for the plaintiffs in this case. And good morning, Mr. (inaudible). Good morning, Mr. Martin and Mr. Studemeyer, sitting here with me physically is in the same room, but he is on mute, and I'll be responding for the plaintiffs today.

First of all, thank you, Judge, for coming into several motions. The -- these motions have been postponed two or three times, and you're gracious to put the focus on this. I could see from the notebook you handed up that you are well into this factually and legally, I realize we are one. This motion is one of 20 motions on your roster today. We're grateful for your time.

So first of all attempting to seal information from the

plaintiffs, not -- I'm not talking about from the public, which is what the Rule 41 is all about, but even from the plaintiffs is a highly unusual move. This is why, as Mr. Martin just pointed out, the Court is required to make specific findings because you're running against public policy when you attempt to seal a portion or all of a file.

And in this case, Judge, because this matter is in litigation, the actual price that the AutoNation transaction is, which is Mr. Martin, of course, is attempting to seal, may be relevant, at least based on his arguments. I'm not sure that it's based on our -- our arguments as to what happened here. Because we take the position that's going back into the facts that Mr. Peacock, the defendant and his car dealerships had no right and no cognizable reason to breach these contracts other than being worried about the pandemic.

And then all along at the same time, was working with AutoNation for what basically was a sale of all Mr. Peacock's, South Carolina assets to AutoNation eventually sold his home as well. So they -- doesn't have any property in South Carolina would be answerable our judgment if we are able to receive one. So our position is, is not only is this information important, it's against public policy to seal it, and it's relevant to the issues that are -- are in this case. For that reason, we oppose the motion to seal. And we thank

you for -- for hearing us.

THE COURT: Thank you, Mr. Baxley.

Mr. Martin, any response?

MR. MARTIN: Just quickly in response. We are not trying to hide this number from the Stivers or Mr. Baxley, and we have offered to make it available to them. We simply need a confidentiality order in place so they can't just go publish it.

So we do think it's relevant. We think we have met the standards both of Judge Herlong and Judge Harwell, and it's -- it's -- and like I said, they agreed originally to -- to make it confidential, then they changed their mind.

So we -- we don't think there's really any dispute here. We are not trying to hide this document or this amount of money from the other side. And we're happy to share it with them, but we just need the confidentiality to be protected because we agreed with AutoNation that it would be confidential.

They've agreed always in their APAs that this kind of information is confidential, and the industry understands that this is the kind of thing that you can't make public because it helps your competitors. It'll hurt Stivers as much as it will hurt us to have it publicly disclosed.

So we would ask that this is the appropriate kind of thing that should be sealed, and it's only just the number,

the -- the affidavits will be available to everyone. And like I said, the number will be available to the Stivers and their lawyers.

THE COURT: Thank you, Mr. Martin.

Let's move on to your -- your next motion. Let me hear a little bit more before I rule on that first one.

MR. MARTIN: Okay.

THE COURT: So let's go. You've got a -- a motion for partial summary judgment. Tell me a little bit about that.

MR. BAXLEY: And you -- Your Honor, excuse me for break -- for breaking in, like a broken record here. We have an argument that this motion should not be heard today, and I don't know if you want to hear that point first before we get into the specifics of the motion itself.

THE COURT: Well ---

MR. BAXLEY: Of course I defer to you.

THE COURT: I think it would -- it would probably be fruitful for me to hear why it shouldn't be heard prior to -- to hearing it. So Mr. Baxley, if you all have an -- an argument against me hearing it today, I'm happy to hear from you.

MR. BAXLEY: Yes, sir. Your Honor, first of all, this second motion for summary judgment is violative of Rule 43(l). And of course, as -- as you are aware, what 43(l) says is if once a motion has been decided, well then it is

decided, and it's a matter that is res judicata with respect to that particular case.

Mr. Stiver -- this is Mr. Stivers' second motion for summary -- excuse me. This is Mr. Martin's second motion for summary judgment. Previously, he filed one back in December 4th of 2020, and it was decided by Judge Newman on March the 24 of 2021 in a form order, a motion for summary judgment.

And this is what she said, "Defendant's motion for summary judgment is denied as to plaintiff's alleged failure to prove or to mitigate damages." And that was signed by Judge Newman -- Judge Jocelyn Newman on March 24th of 2021.

This second motion was filed on May the 12 of 2022, and basically involves the same thing, Your Honor, and I'll point out that Mr. Martin, has said in his brief, and I should also add that on -- although the motion was filed on May the 12th of 2022, the supporting memorandum and approximately 400 pages of supporting information were not filed until May the 17th of 2023, which is six days ago in order for us to try to wade through that and make a response here. Mr. Martin's position is there's been new facts that have been discovered, which allows him to make this motion.

Again, I would simply say that -- well, our position is, is that the damages for our breach of contract, this is well stated in South Carolina law for over 125 years, foundational law, is at the time and the date of the alleged

breach.

And what Mr. Martin has continued to do is to go and look at subsequent sales, subsequent information, subsequent cash flows, and make an argument that does not, in our opinion, relate back to the date of the breach. And so there's no new information here. It's the same thing that these things that happen afterward affect the date and time of the breach.

And, Your Honor, first of all, we would submit as not a law, but secondly, we -- we would submit that it's just clearly valid Rule 43(l). And in his brief, Mr. Martin cites the case of Durrell versus (inaudible) DOT, for the proposition that you a circuit judge can hear, again, a motion for summary judgment if there's been new evidence found. Please don't think, I think I'm an expert on the law.

I have my own children who tell me every day that I'm not an expert on anything. But I would simply say to you, I have some familiarity with the Durrell case. I was one of the plaintiff's lawyers in that case. What happened in that case, this was down in Horry County with someone traveling into Georgetown County down Highway 17 and ran off the road to the right, into about a one foot drop off from the pavement, car rolled over, and there was a serious injury that two serious injuries that resulted. And in that case, there -- the plaintiff sued the Highway Department, but they

also sued APAC.

Well, summary judgment was granted -- excuse me, was denied early on with respect to APAC. And then about a year and a half later, our friend, Judge Bogden came to town and he granted a second motion for summary judgment.

The Supreme Court took that matter up. They actually reversed the grant of summary judgment, not on the issue of whether it could be heard, because the Durrell case stands for that, if that it is not an abusive discretion. That's the important part. It's not an abusive discretion for the Judge to hear it. But the grant of it apparently was inappropriate because the certain Supreme Court Judge, reversed Judge Brogden when he had granted summary judgment, then that was on the issue of not when a contractor closes a -- a construction and is accepted by the Highway Department, does that cut off all of the responsibility for APAC, which is (inaudible) does not. That's a little bit too much background there.

But the point is this, the rules -- and there's a reason for this -- this rule is not to continue to litigate the same matters that's already been litigated, go through the expense, the cost, the time of your court judicial economy to hear something that's already been heard and denied. We would ask you not to hear it, Your Honor, and use your discretion not to do so.

THE COURT: Mr. Baxley, you make some compelling points.

Mr. Martin, what's your response to Mr. Baxley?

MR. MARTIN: Well, I -- I need to congratulate him for getting to argue his side of the case before mine, which is very good. And I -- I am very impressed that he was able to do that. But I think, there's not really compelling facts that apply to this case.

The first reason is, when we had the motion for partial summary judgment, there was absolutely no discovery. And all we were saying back then was, "Hey, they kept the dealership, therefore they haven't suffered any damages."

And Judge did not decide the case on March 24th, she decided the case on November 21st, there were several motions in front of her. In fact, Mr. Baxley's co-counsel, told that Judge, she wasn't intellectually capable of hearing those motions. And she basically said she was, he filed a motion for continuance. It was denied, and we had a almost three hours' worth of arguments.

She decided several of the motions that day, but took several under advisement, and this is one of the motions she took under advisement. And it wasn't until November 21, 2021, almost eight months later, that she just issued a form order saying that motion was denied.

So that's the first reason. It was -- it was a

situation where we didn't have a motion where she actually set out the reasons and -- and properly analyze the situation. But the most important difference is, since that motion was heard in March of 2021, almost two years have passed, and we finally got answers to interrogatories. And what we discovered was, is ---

THE COURT: Mr. Martin -- Mr. Martin, hang on. Wouldn't you agree though? I mean, it's -- it's your decision on when to file a motion for summary judgment. You know, the argument I -- I'm hearing is that, well, we didn't have discovery when we filed it. Now we do. So we should get another bite at the apple to make the same argument. I -- I mean, is -- is that what you're saying?

MR. MARTIN: Well, exactly. And if you look at the case of Smith versus Breedlove, which we have cited, the Supreme Court of South Carolina said that the finding of the circuit court did not err in hearing Breedlove's second motion for summary judgment. Although the legal basis of the motions were the same, where discovery had taken place and new evidence had been established. We had tried to get them to -- to give us this information, we had to file a motion to compel. They have -- they have literally fought us every tooth and nail in this case.

So at the time that the motion was heard, we didn't have their discovery, and we had to go to the Court and ask

the Court to intervene in order to get it. Once the Court said yes, it took them to November, even though in March she said, yes, give it, it took them to November to get it to us.

And -- and the -- the actual first motion is very -- is very different from this motion, because the first motion was based on the failure to mitigate only. The second motion is based on the subsequent discovery where we discovered that when they sold the Chevrolet store, they made a half a million dollars more than they did in the previous, which we didn't know in the first motion. And that -- as I said, the first motion was based on failure to prove damages because they failed to mitigate.

The second motion was, we also found out that they've made almost $5.8 million in profits. The -- the whole difference is, if they claim that we have violated their breach of contract and they have suffered damages, we are allowed to raise mitigation of damages. And there are four prominent evidence professors, Judge Corbin, McCormick, Williston, and I can't remember the next guy's name, who clearly and unequivocally say that you cannot have a breach of contract and get more than what you would've gotten if the contract was performed.

So our whole motion, this second motion is different from the first motion because it is totally based almost three years later on these damages and discovery that we had

asked for in the past, but never got. But once with the Court's help, we got this information.

So basically what we have here is we have a case where they're claiming a breach of contract. We are filing a motion based on the issue that they have made $5.8 million since the breach of contract. Now, they actually have the dealership.

Now, the Chevy dealership they sold, they made a half a million more than the deal they made with us. So they're not seeking any damages for the Chevy store. So they're admitting that mitigation of damages apply because they're saying we're not seeking any damages. They also made $265,000 in profits from the date of the alleged breach to the date of the sale of the Chevy store.

So 500,000 plus 265 gives you, what? 765. They're not even seeking that. But what we're saying is, this is a motion that is completely different from the first motion in the fact that it is based on the increase in the value. The -- the Hyundai store back in January of 2020 was worth 3.5 million.

Now, based on the Hague report, which is in our memo, it's worth about 3.5 million more or $7 million. If you take the average, it comes to about 3.5 million. So this motion is completely different. Smith versus Breedlove even says if it's on the same grounds, if you have new evidence to

establish summary judgment, you do get a second bite at the apple. And that's what we're asking the Court to do.

THE COURT: That's a lot of numbers getting thrown around when you're also asking that I -- I seal some numbers.

Mr. Baxley, any -- any response?

MR. BAXLEY: Yes, Judge, just very briefly, here's the wording of Judge Newman's form 4. "Defendant's motion for summary judgment is denied as to plaintiff's alleged failure to prove or to mitigate damages." So what Judge Newman is saying is stated in the negative, he said we'd fail to prove or to mitigate damages, is what Judge -- Mr. Martin had argued, but Judge Newman found that he failed, and we had put forth evidence that showed that we were proving damages and that we had mitigated damages. And so now we're right back at the same point and it's just re-litigating an issue that has been decided.

Thank you for hearing this, Your Honor.

THE COURT: Thank you, Mr. Baxley.

Mr. Baxley, while I understand exactly where you're coming from out of abundance of precaution. I'm going to allow the motion to be heard for the record.

Mr. Martin, you've already put a good bit of, I think what your motion is on the record already, as well as I -- I do have your actual motion. Happy to hear anything else you'd like to add, though.

MR. MARTIN: One second. I need to -- my lawyer's telling me what to do. Okay. Thank you for giving me a minute, Judge. The key to this motion is let's assume that we take the facts and -- that are in the most favorable to Stivers. Stivers decided to keep the Hyundai dealership.

Based on the fact that they decided to keep the Hyundai dealership. They have a duty to mitigate damages. That has been the law in South Carolina. The law all throughout the country, I've already told you about the restatement, a second of contract supplies, Williston applies, Judge, Professor McCormick applies, and McCormick was the guy that I studied when I was in evidence back in law school.

So all of the commentators make it clear. And in fact, there's a -- there's a quote from Judge Frankfurter in a descending opinion where he says, "You're not supposed to take one man's breach to turn into another man's unfair recovery."

And that's exactly what we have here. What we have is they sold the Chevy store. They're not -- the Chevy store isn't even in this case. They made 750,000 more by selling it in October rather than to us in June or July. They decided to keep the Hyundai store. We offered to buy them.

They originally sued us for specific performance saying, "Make us buy it." So in June and October, we said, "We'll buy it -- we'll buy it -- we'll buy it." In fact, we

agreed even to pay them $200,000 towards attorney's fees. And we were very -- very close in July of working it out. But unfortunately, it did not work out. And this lawsuit continues.

So what we're saying, Judge, is we have here the plaintiff Stivers saying, "I'm going to keep the Hyundai store." Once they decide to keep the asset, the breach of contract, they have an expert who says, 2.3 million is what they suffered.

Well, if 2.3 million is what they suffered, they have a duty to mitigate the damages. And they decided that they would hire a general manager and run the store. And at the discovery that we finally got, it shows that they made a profit of about $5.8 million. I mean, it was phenomenal.

In fact, they're still going great guns. They're either one or two in all of the ratings of the Hyundai stores in -- in their region. So it is clear that they have made 5.8 million. If they allege 2.3 million in damages, there's nothing for the jury to give them.

And in a -- and a related principle is -- is when the non-breaching party indirectly benefits from the defendant's breach in order to avoid overcompensating the promisee, any savings realized by the plaintiffs as a result of the breach must be deducted from the recovery. And that's Williston on contract section 64.3. And it's also DP -- DPJ company

Partnership versus FDIC, which is a First Circuit case.

So in that case, it held that with respect to reliance damages for breach of contract, a deduction is appropriate for any benefit received by the claimant for salvage or otherwise, that -- that case involved -- I think, ships and they were sold for salvage.

So the fact that the -- the plaintiff got money for salvage, it had to be deducted from the damages. So the fact that they made $5.8 million in net profits since they got to keep the dealership we're saying there -- there is no damages here for the jury to determine. And that's why partial summary judgment should be granted.

Next, the actual value of the asset, the actual dealership, which was worth 3.5 in January of 2020, there is this Hague report that all of the dealers rely upon. It's a very prominent group of scientists, economists that evaluate what the value of dealerships are if you want to buy or sell them, and all the dealers use them. And we've cite that in our memo.

The Hague report shows, that the value of a Hyundai dealership has increased almost twice. Now, this is not a number that we're using, that we're asking to be sealed, which we're allowing the plaintiff to see under a confidentiality order. But this is just the Hague report that's available to all car dealers all over America.

And what's happened is -- is since January of 2020, car dealerships have become extremely valuable, especially Hyundai dealerships. And since they got to keep the dealership, which if the contract wasn't breached, Peacock would've owned the Hyundai dealership. And we would've had the situation where the value went from 3.5 to $7 million on the average based on the Hague report. That's double. So if you take the $5.8 million in profits that they've made by mitigating their damages, and you take the $3.5 million increase in value, they have over $10 million in value as a result of the breach.

And as just as Frankfurter said, you can't make someone unjustly enriched by having them breach the contract. And that is the essence of this -- of this motion, Your Honor. And that's why we're saying, even if the jury is allowed to determine whether or not there -- there's an argument about $100,000 liquidated damages, which is not before you in this motion, but even if -- even if the jury is allowed to hear it, they are not allowed to give money. Whereas a matter of law, these undisputed amounts are -- are undisputed and they -- they far exceed what the value of the damages are. And that's the essence of our argument.

THE COURT: Thank you.

Mr. Baxley.

MR. BAXLEY: Yes, sir. Your Honor, thank you. Judge,

I'm going to have to get into a little bit -- this will spill over into our motion for summary judgment, which may actually shorten that argument when we get to it. So first of all, Mr. Martin, if you just close your eyes and listen to him, he -- he sounds reasonable and makes a good argument, but -- but he omits one huge major foundational factor, which is this, the damages for breach of contract are measured at the time of the breach.

One of the issues that we've had here is that all this subsequent thousands of pages of documents about what's happened subsequently is not really relevant to the damages for the breach of contract. This is for a decision by the trier of fact. You -- we -- we've got to check ourselves back in time what happened here. This was right on the cusp, right at the beginning of COVID.

And the interesting thing is, they began discussions the two parties here back in September, 2019, about this potential sale. They actually entered APAs on January 7th of 2020, and then the defendant, Mr. Peacock, just simply walked away on March 27th of 2020. And he at that time cited a -- a ruling that had been issued a -- an edict that had come from Mayor Benjamin there in Columbia, which was sort of a -- I guess a hold in place or stay in place with -- from which automobile dealerships were exempted, they cited that as the reason which we allege Mr. Fully experience.

So, Judge, let me just kind look at the big picture here for a moment. If you think about it, we -- we would never be able to solve or resolve any breach of contract case if we took Mr. Martin's approach. Because what he's saying is, let's look at all these things that happened afterward, and let's calculate what -- how that impacted what happened back on the date that this breach, which again was back in 2020.

Well, every -- every party in a breach contract case would be waiting to wait. Let's see what next month's going to bring to see how the economy may turn this way or that way, and effect the damages. That is not what the law is in South Carolina. It's as of the date of breach. We've got an expert who said that $3.5 million was the amount of the contract here, that the plaintiff sustained $2.3 million in damages at the date of the breach because (inaudible) what's happened.

At that time, automotive dealerships were thought to be worth nothing. There were automotive dealership owners that were attempting to sell them for whatever they owed on them, simply to get out from under what appeared to be a market crash that was going to be unsustainable, not only for the dealers, but also for the manufacturers.

And then came -- which one -- nobody saw it coming, thanked the Lord, the paycheck protection program, which

flushed into the economy, trillions of dollars, really hundreds of millions that flowed into the automotive dealerships, and then they took off and went.

But what happened here was Mr. Peacock walked away and left Stivers in the lurch on these two dealerships with -- with really not knowing whether he was going to be able to make payroll and continue those businesses as a thriving business for any period whatsoever.

So you can't just say, "Hey, look this is a -- this -- we did you a favor Mr. Stivers by walking away from you." And Mr. Martin said, you can't be unjustly enriched. Well, he's not pled the affirmative defense of unjustly enrichment, and so he just tosses that in as a result of these thousands of pages of document that he's reviewed.

What we're simply saying is this, this question of the damages and when they occurred on the date of the breach, not in 2023, with the great hindsight that we have now, is a matter for the jury. We've got an expert opinion, we are prepared to go to the jury on that expert opinion and let the finder of fact make a determination of whether indeed there was a loss to Stivers at the time of the breach.

And I will submit to you there is, because there's evidence whenever you sell a dealership, you -- you got to get rid of your like a fire sale, your used car inventory, you got to get rid of other inventory that you had. You got

to get the dealership prepared for the sale. There's a lot of losses associated with that. And then Mr. Peacock walked away.

So in a nutshell, that's why we say for the second time, this argument is not cognizable at this point. It's a matter for the finder of fact and is evidence in the record that supports the plaintiff's position. Thank you for allowing (inaudible) argue.

THE COURT: Thank you, Mr. Baxley.

Mr. Martin, I -- I tend to agree with Mr. Baxley in that I -- I think that there are far too many factors weighing into those numbers than just raw numbers. I think that it -- it's something that needs to be fleshed out at trial and I think it's proper to be heard by the jury. I'm going to deny your motion for partial summary judgment.

What is next before us?

MR. MARTIN: Yeah, Judge, we have two things. One is a motion, plaintiff's motion to compel some discovery from the defendant, and then the plaintiff's motion for partial summary, Judge.

THE COURT: Let's do the motion to compel first.

Mr. Baxley.

MR. BAXLEY: All right. (Inaudible) hearsay. All right. Thank you. Judge, we have asked for the -- from the defendant. Let me just back up and say we have alleged bad

faith, if you will, actually breach accompanied by fraudulent act.

It is our position as I mentioned this earlier that the defendant was at the same time talking with us talking with AutoNation and that there was significant discussion going on at the same time. This was, these -- these contractual negotiations were going on, and the defendant made a decision to go with AutoNation and -- and have what I would call a bulk sale of multiple dealerships to AutoNation.

We simply have asked -- because again, we've alleged bad faith here that this was going on behind our back, and that the breach (inaudible) to the benefit of Mr. Peacock because indeed he turned around, sold everything, got rid of his assets in South Carolina.

And we believe all of that is pertinent to the issues that are in play here as to whether he was dealing in good faith with the Stivers. And that issue, we believe is not only relevant but pertinent what happened. That's why we're asking to for you to compel him to provide us information that would give us the communications that we're having with AutoNation and documents that passed between them with AutoNation and the defendant. So that we can look and see whether or not this was indeed contemporaneous and was indeed evidence of bad faith or fraud (inaudible) partner. In a nutshell, that's what we're asking.

THE COURT: Thank you, Mr. Baxley.

Mr. Martin.

MR. MARTIN: May I please the Court?

The APAs that are subject to this lawsuit happened in January of 2020. In March 27th of 2020, we sent a letter saying we were going to terminate the agreement, which was our right, because A, we didn't get the financial information they promised. And B, they made a big profit in the fall. They gave us those numbers, but they lost money in the winter and they hid those numbers.

So that's the reason why the termination occurred in the first place. This case was filed almost immediately in April of 2020 by Stivers. And their lawyers have filed some 21 motions over the last three years, including this motion to compel. Almost two years after the case was pending, we sold our dealerships to AutoNation and signed a confidentiality agreement.

The -- we were not the complaint and the amended complaint filed by Stivers had absolutely nothing to do with AutoNation, had absolutely nothing to do with Peacock selling to AutoNation, and has nothing to do with potentially collecting a judgment in the future. If they get a judgement in the future.

This has total no relevance whatsoever to the issues of whether or not we breached the contract, whether or not they

made a lot of money in 2019, and then lost a lot of money in the winter of '19 and '20, whether they hid those documents from us, and whether we had the right to terminate the contract.

This whole case involves two dealerships; the Chevrolet dealership in Columbia, and the Hyundai Genesis dealership in Columbia owned by Stivers. It has absolutely nothing to do with Peacock's almost two years later sale of dealerships in Hilton Head, dealerships in Columbia, dealerships in Savannah. It has absolutely nothing to do with that.

And for them -- what -- what's happened is, is they've decided that they're going to punish us with attorney's fees, punish us with motions, and this is just another one of their efforts to try to get something that has absolutely nothing to do with the lawsuit.

I mean, for heaven's sakes, their -- even though their amended complaint has absolutely nothing to do with AutoNation and Peacock sale to AutoNation, they're trying to somehow bring into this case something later happened. And we think the motivation is, is they just want to harass Warner Peacock, and they're mad that we didn't buy their dealerships that they've made millions of dollars since.

So we're -- we're just scratching our heads and we're just saying, Judge, let's keep the eye on the ball. Let's have this case focus on the dealership, the Hyundai Genesis

dealership in Columbia, whether or not we had the right to terminate on March 27, 2020, and whether or not they mitigated their damages. And those damages far out sees -- I mean, their mitigation far out sees their damages.

THE COURT: Mr. Baxley, on your request, I'm -- I'm trying to find it, and I -- and I I'm sure it's in here. I -- I apologize. Your request for production or your interrogatories that you're -- you're citing in your motion to compel, did you put a timeframe on those? I mean, I -- I, you know, a request into perpetuity about what are your -- what were your negotiations or what was your contact with these other dealerships?

That may be too broad. It -- it -- Mr. Martin may be correct that that may have nothing to do with it. However, if there is contact that's going on during, you know, the -- the '20s, even after this is filed, I mean, based on what I am seeing, there was APAs and -- and submissions of an APA as far as in October of 2020. Am I -- am I correct in that?

MR. BAXLEY: And, Judge, if I may just the -- just going back the -- our two APAs were breached on March 27, 2020. There is a time limitation in what we've asked, which is January 1, 2020 to October 1, 2021. And the reason we have October 1, 2021 is that that's the date that it went public, that this large transaction had occurred between Peacock and AutoNation. So we've got January 1, 2020 to

October 1, 2021. I should have said that in my -- in my initial argument. Thank you.

THE COURT: Can you point me to the exact interrogatory? I'm -- I'm sorry, I'm -- I'm just wondering exactly what the -- the request is. If it just deals with -- let's see here.

MR. BAXLEY: Just one moment, Your Honor.

THE COURT: Well, in your motion, you know what page it's on the -- and it may be as -- as one of the exhibits?

MR. BAXLEY: Yes, sir. I think it is an exhibit and I can -- I can read to you. I think I have it written here. Yeah. Let -- let me -- let me read -- I can read to you.

THE COURT: Okay.

MR. BAXLEY: Interrogatory number 14, identify all communications between any member and/or agent of defendant Peacock Automotive, LLC., and any third party related to the sale defendant Peacock Automotive, LLC., Hyundai assets in Columbia, South Carolina on/or after March 27, 2020. So that date -- that question does not have a limitation, but we would add the limitation just for ease of Mr. Martin's response of until October 1 of 2021.

THE COURT: You know, with the limitations on that as far as the date, I think that it could be relevant assuming that anything exists that would -- would be fruitful at all. I could certainly see it being relevant in the deposition.

Have any depositions been taken in this case yet?

MR. BAXLEY: No, sir.

MR. MARTIN: No, Your Honor.

THE COURT: Okay.

MR. MARTIN: And -- and if I may just ---

THE COURT: Yes.

MR. MARTIN: --- just add one thing, Judge, before you rule, they're alleging we breached the contract on March 27, 2020. They're -- how in the world can any communication with AutoNation after March 27, 2020 have anything to do with that breach of contract? I'm just -- I'm just confused.

THE COURT: But you would admit, Mr. Martin that for months and months after that, there was still negotiating – negotiations going on?

MR. MARTIN: We -- we tried in October of 2020 to get them to sign an APA, and they didn't. Even if it was October '20, if there's any -- and I can represent to you that we had no contact with AutoNation before October, 2020. We wanted to buy this dealership from them in October of 2020. And selling all our other dealerships months later to AutoNation has nothing to do with whether we were going to buy. And the truth of the matter is, if we bought the dealership in October of 2020, if they signed the APA, we would've just had another dealership to sell to AutoNation and make a profit -- a -- a significant profit on.

THE COURT: Well, that may be what they want to find out. I do find that it -- it could potentially be relevant. I think that -- when it -- it comes down to it, it may not be fruitful at all, but I'm going to grant the motion to compel regarding that. I am going to give you some time to -- to get that though not the general 30 days. I -- I can imagine that may be hard to find if there's some emails, that kind of thing. So why don't we say 60 days?

MR. MARTIN: Thank you, Your Honor.

THE COURT: Okay, Mr. Baxley, your next motion?

MR. BAXLEY: Last one, Your Honor. Thank you again for your courtesy. I should say that ---

MR. MARTIN: One -- one second before we go, Your Honor.

THE COURT: Yes.

MR. MARTIN: I want to ask a question. They have a second interrogatory number 14, they say it identify all communications you had with any person regarding the sale of your Hyundai assets in Columbia on or after March 27, 2020.

MR. BAXLEY: We added limitation during ---

THE COURT: October ---

MR. BAXLEY: --- October, 2021.

THE COURT: So you want to limit it (crosstalk) should I limit it to October of 2021 -- from May to October, 2021?

MR. MARTIN: Okay. Thank you. That -- I'm sorry to

interrupt.

THE COURT: No -- no. Thank you, Mr. Martin.

Okay, Mr. Baxley.

MR. BAXLEY: And, Judge, so there was a motion to enlarge time as well that was pending and that matter is moot because it was -- it was filed back in I believe in (inaudible) maybe 2021 as well. And that's been resolved between the parties. The last thing that we have pending, at least to our knowledge, is now our motion for partial summary judgment on the -- our summary judgment in part on our declaratory judgment action.

Okay. So part of this, we've already ordered this. Thank you for your time. You've been -- you've been with us for an hour. We're trying to make this very brief. So, Judge, this is a question of damages, of course, in a declaratory judgment action that allows the Court to declare what are the rights, the status, and the legal relations between parties. And simply stated, what is the law of the case with respect to damages in this case?

And this is what we're asking the Court to determine. That the appropriate measure of damages is -- with both of these APAs, is the difference between the contact -- contract price and the fair market value of the assets listed in the APAs at the time of the breach.

So, Judge, this -- this has been just what I would call

foundational jurisprudence for well over 100 years, actually about 125 years here in South Carolina, and way back to Huguenot Mills versus Jempson. And that this case is at 47 S.E. 687 19 Enforcer. We're going way back where the Court first stated here in South Carolina Supreme Court said, "Where the exact time for delivery is to be afterward fixed by the purchasers. The measure of damages is the difference between the contract price and the fair market value at the date of refusal to receive the goods."

Also in the case of Swift versus Goldberg, this is 1922, South Carolina Supreme Court said, "Because the law -- in order to ascertain the measure of damages in a breach of contract, because the law has a measure of damages in this state, and that measure is the difference between the contract price and the reasonable market value at the time and at the place of the breach of the contract."

So what we're asking here is that these sales, which are really referred to single shot market transactions, should be -- the -- the damages should -- you should find as a matter of law, this is the measure of damages in the case. I feel like this case is sort of pondering all over the place as to what the damages are with plaintiff pushing one way and defendant pushing back the other way. And if you would, consistent with South Carolina law grant -- again, I request that indeed the market measure of damages as we've defined it

here would be the law of this case and how damages are to be determined in this proceeding. We're not asking that plaintiff win, we're not asking that defendant win.

That's for the trial of fact. We're just asking how about will you please set the grid upon which this decision's going to be made? And I think that Dan Dobbs and Dobbs Law of Remedies, which you'll find in section 12.2 from 2018, says fair well. He -- he says that the market measure damages allows a breach victim to recover the market value of the very performance he or she should have had less the contract price. And when the buyer commits a breach, the same principle applies to the seller's damages fund, but the seller shows damages by showing that the contract price is greater than the market value on the relevant date.

So that's -- that's the point. It all goes back to the date in question. And, Judge, I'll just be quiet here because I think our position is obvious that is what the measure of damage should be in this case. We're asking you to rule that to -- for reasons of legal and judicial economy going forward. Thank you, Your Honor.

Thank you, Mr. Baxley.

Mr. Martin, your response?

MR. MARTIN: Couple of things, Your Honor. First of all, my friend represents the half of the law, but not all of the law. Damages in South Carolina has clearly been, "The

proper measure of damage for breach of contract is the loss that was actually suffered as a result of the breach." That's the Manios versus Nelson Mullins case cited in our brief.

The doctrine of mitigation applies in this case. They got to keep the dealership, they had a dealership that increased in value from 3.5 to 7 million according to the Hague report. So they made 3.5 million on the breach. As far as mitigation, if they argue that they ran the dealership and made a profit of 5.8 million, those damages are required to be considered as a deduction of the damages that they say. So if their expert says 2.3 million in damages and they've increased the value of the dealership by 3.5 million and they've made 5.8 million by keeping the dealership, that's over 8, $9 million. There's no way that the jury cannot decide.

And South Carolina has said in 1955, it said, "It is the undoubted general rule that it is the duty of the owner of the property, which is injured by the negligence of another to use reasonable means to minimize the damages." That's the Newman versus Brown case.

The duty to mitigate losses applies to contracts as the system -- system construction case. So the law in South Carolina is absolutely clear. You don't have the right to claim a breach of contract and ignore your right to mitigate

the damages. They admit that they mitigated the damages in the Chevy store by reselling it for half a million more than what they were going to sell it to us. And by making $265,000 in profits while they -- the time from the alleged breach to the time they sold it. So they made $785,000, and mitigated their damages and have admitted it.

But now with the Hyundai store, which they decided to keep, they have the value of the thing they were going to sell. And South Carolina law says that if you keep something, then you got to mitigate your damages. You can't just put it under a rock and make believe that it didn't exist. You've got to give us the benefit of the mitigation, and the rock itself became worth twice as much than what they were going to -- what we were going to pay it for. So really it would've been far better for my client to have bought this at 3.5 when it's now worth seven.

So we are saying these are issues for the Court-- I mean for the jury, these are issues that must be decided in the case. You've denied our summary judgment motion, and I'm requesting that you deny theirs. And the final thing is, is there's also a contract limitation in this case. When they sign the contract, they said, "We agree that if there's a breach of contract and there's damages sought, it'll be limited to the deposit -- the escrow deposit." Which is $100,000. So the whole issue of limitation of damages is

also before the Court. So if -- if they're asking you to rule in their favor today about all these issues that are out there for the jury, that would be very inappropriate.

MR. BAXLEY: May I respond briefly?

THE COURT: Yes, you may.

MR. BAXLEY: All right. Thank you, Your Honor. First of all, the $100,000 limitation is only in one of the APAs, the escrow deposit discussion. And that being liquidated damage only in the Chevrolet APA, not in the Hyundai.

And, Your Honor, I just would say to you some of the cases you heard cited, for example, the Nelson Mullins case, that's a legal malpractice case. We question the relevancy of many of the cites there, but simply Safety Horn Book, Black Letter of Foundational Law in South Carolina is the market measure of damages. We just stated. We need to set that as -- as our course in this case and move toward it and resolve this matter if we can. And that's all. Thank you, Your Honor.

MR. MARTIN: (Inaudible) if I can just ---

THE COURT: Oh, go ahead.

MR. MARTIN: I'm -- I'm sorry. Since he raised the issue that the limitation of damages is only in one of the APAs, I do need to bring up to the fact that they misquoted in their brief, the section of the APAs. And then -- and if you read the actual APA that they misquoted, you'll see that

it refers back to the Chevrolet APA and says it should be controlled by the Chevrolet APA. So that's the only point I wanted to raise. Okay.

THE COURT: Thank you. I'm going to take this motion under advisement. It does give me some heartburn, just the -- the simple fault of trying to put before a jury economic numbers, given the fact that COVID was going on as well as the -- the influx of billions and billions of dollars.

I just -- trying to -- to then say, well, the market approach and the -- the amount that this -- that -- the value of the damages and the mitigation, that -- that just seems -- well, it's a head scratcher. We'll just put it that way. So I'm going to take that motion under advisement as well as the motion to seal. I should have an answer with you all -- for you all probably within 15 days.

I'm going to be in Columbia next week for general sessions, but I'm -- I'm hopeful that maybe I'll be able to spend a little time Friday working on this, and give you guys some kind of response. But I appreciate your time. I know that this is a case that's been going on for a while. I do really appreciate the fact that you -- you all briefed the Court, you -- you filed memorandums in support in a case like this where there is so much going on and there's so much back story, that is very, very helpful. And I do applaud you all for that. But thank you again and -- and I'll be in touch,

okay?

MR. BAXLEY: Thank You, Your Honor.

MR. MARTIN: Thank you, Judge.

MR. BAXLEY: Have a good day.

THE COURT: Thank you, you too.

(THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED)

CERTIFICATE OF TRANSCRIBER

I, NATASHA BARRIENTOS, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 5 of Richland County, South Carolina, on the 23rd Day of May, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 7, 2023

Natasha Barrientos

Transcriber

ELECTRONICALLY FILED - 2023 May 19 1:11 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001934

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND STIVERS BROTHERS AUTOMOTIVE, INC., Plaintiff, v. W. WARNER PEACOCK and PEACOCK AUTMOTIVE, LLC, Defendants.	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CASE NO. 2020-CP-40-01934 **AFFIDAVIT**

Personally appeared before me, the undersigned, who first being duly sworn, deposes and says:

1. I am a Partner at BradyWare Arpeggio LLC in Alpharetta, Georgia.

2. I am a Certified Public Accountant licensed by the States of Georgia and Vermont.

3. I hold professional credentials issued by the American Institute of CPAs, including Accredited in Business Valuation ("ABV") and Certified in Financial Forensics ("CFF").

4. I also hold professional credentials issued by the National Association of Certified Valuators and Analysts as Certified Valuation Analyst ("CVA"), and Accredited in Business Appraisal Review ("ABAR") (originally issued by the Institute of Business Appraisers as predecessor to the National Association of Certified Valuators and Analysts).

5. I specialize in business appraisal, litigation support and forensics, and merger and acquisition advisory services.

6. Over the course of my career, I have been involved in a number of appraisals and consulting assignments involving automobile dealers and related automotive industry companies.

7. I was retained by the Plaintiff on September 9, 2020, to perform a calculation of the damages incurred as a result of Defendant's alleged breach of an Asset Purchase Agreement ("APA") to acquire substantially all of the assets of Stivers Hyundai.

8. I calculated the damages caused by the Defendant's alleged breach by considering the proceeds the Plaintiff would have received from the Defendant at closing under the APA for tangible assets plus the contractually agreed value of the other intangible assets and goodwill, less the fair market value of the same categories of tangible and intangible assets on the date of breach, March 30, 2020.

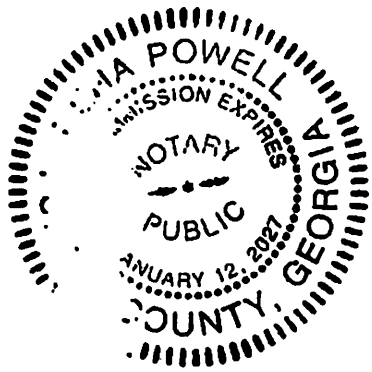
9. I concluded that the damages suffered by the Plaintiff totaled Two Million Three Hundred Thousand Dollars and 00/100 ($2,300,000.00).

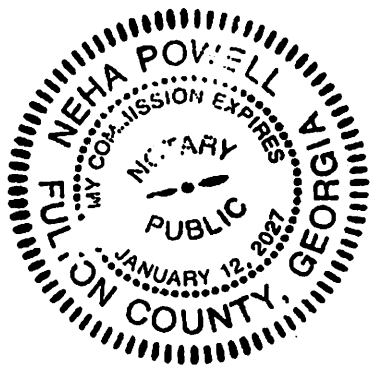
The undersigned knows the facts stated herein to be true of his own knowledge, is competent to testify to them, and would so testify if presented as a witness at a hearing in this matter.

Mark A. Dayman

SWORN to before me this 19
day of May, 2023.

Neha Powell
Notary Public for Georgia
My commission expires: 01/12/2027





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Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

15 September, 2025

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