

Asset Purchase Agreement

THIS ASSET PURCHASE AGREEMENT (this “*Agreement*”) is made effective 12 January 2017 between **SALT LAKE AUTO CENTER, L.L.C.** or its assign, a Utah limited liability company whose address is 7951 South State Street, Midvale, UT 84047 (“*Buyer*”); **SMART CAR, INC.**, a Utah corporation d/b/a **SALT LAKE MITSUBISHI** whose address is 3734 South State Street, Salt Lake City, UT 84115 (“*Seller*”); and **MATTHEW P. MALOUF** (“*Mr. Malouf*”), an individual whose address is c/o 3734 South State Street, Salt Lake City, UT 84115.

RECITALS:

A. Seller is the sole owner of the assets used in the operation of “Salt Lake Mitsubishi,” a new and used motor vehicle dealership (the “*Dealership*” or the “*Business*”) located at 3734 South State Street, Salt Lake City, UT. The Dealership is operated under a dealer agreement with Mitsubishi Motors North America (“*Manufacturer*”).

B. Mr. Malouf owns all of the issued and outstanding shares of stock of Seller, and is a party to this Agreement for the limited purposes specified in this Agreement.

C. Pent-M State Street II, LLC, a Utah limited liability company (“*Landlord*”), owns fee simple title to the improved realty (totaling approximately 2.97 acres) (the “*Realty*”) comprising the Dealership’s business facility.

D. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, substantially all of the assets of Seller, subject to the terms and conditions of this Agreement. In connection therewith, Buyer also desires to lease the Realty from Landlord on the terms and conditions specified in a certain “Lease Agreement” (the “*Lease*”) of essentially even date herewith between Buyer and Landlord.

E. The parties desire to set forth herein their entire agreement concerning the subject transactions. This Agreement shall supersede all prior negotiations or agreements between the parties, oral and/or written, concerning the subject matter of this Agreement, including, without limitation, the 6 January 2017 letter of intent between the parties or their agents (the “*LOI*”).

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, the mutual covenants and undertakings of the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. **Purchase and Sale.** Subject to appropriate approval from Manufacturer and the other terms and conditions of this Agreement, Buyer agrees to buy and Seller agrees to sell the following assets of Seller (the “*Assets*”) on the following terms and conditions:

(a) **Parts.** All of the motor vehicle parts and accessories inventory (the “*Parts*”) of the Dealership established by physical count as of the date (the “*Inventory Date*”) that is one business day prior to Closing (defined below), updated through Closing, *excluding* any and all obsolete parts, but *including*, without limitation, all unopened, original container,

undamaged and saleable “no part number” parts. Obsolete parts (“*obsolete parts*”) shall consist of the following: (i) any part that is not included in the subject manufacturer’s or supplier’s current parts pricing list; (ii) any part that is materially damaged in any way; (iii) any part which is missing a portion or portions of its working mechanism(s) such that it would not be accepted for return by its manufacturer or supplier; (iv) any part that of a type which has not shown a sale by the Dealership within 12 months prior to Closing unless it is qualified for return to and/or credit from its manufacturer or supplier; and (v) any part that otherwise is not returnable to its manufacturer or supplier. The Parts may include motor vehicle parts manufactured or sold by Manufacturer as well as those manufactured or sold by Manufacturer’s distributors or other reputable third party suppliers.

The Parts shall be valued at their dealer cost (after giving effect to all dealer discounts) as of the Inventory Date as shown in Manufacturer’s parts catalogue or other current price list(s) reasonably specified by Seller. The inventory, itemization and prices will be attached hereto at Closing as Schedule 1(a). The inventory may be conducted by representatives of the parties or by an independent inventory service, shall comply with any approved inventory standards of Manufacturer, and shall show each item of Parts by its extended unit price.

Seller believes that the current value of the Parts inventory is approximately \$150,000. Before Closing, Seller will maintain the Parts inventory at normal operating levels (but shall allow Buyer to review and reasonably approve all material Parts orders after the date of this Agreement), and will provide Buyer with full access to and adequate background information necessary to establish Seller’s cost, discounts received and other necessary information to determine the final prices for the Parts.

As of Closing, Seller shall be deemed to have assigned to Buyer Seller’s termination rights under its dealer agreements with Manufacturer, pursuant to which Buyer may have the right to return to Manufacturer certain unwanted Parts purchased by Buyer pursuant to this Agreement. In that regard, the parties acknowledge that Manufacturer may have made available to its authorized dealers (including Seller) various incentive programs (the “*Parts Programs*”), the intent of which is to encourage those dealers to use parts available through Manufacturer and to minimize the return of those parts. Any and all sums relating to operations of the Dealership on or after Closing that are actually paid by Manufacturer under the Parts Programs shall belong to Buyer. If any such sums are paid directly to Seller after the Closing Date, then Seller shall immediately transfer the entire amount of such payment(s) to Buyer.

Buyer may, but shall not be obligated to, also purchase such obsolete parts as Buyer specifies at Seller’s verified cost.

(b) *Furniture, Fixtures and Equipment*. All equipment, machinery, shop equipment, office equipment, furniture, fixtures (including hoists and leasehold improvements), special tools, signs and similar items owned by Seller and located at the Dealership on the Closing Date (the “*FF&E*”). Within 15 business days after the effective date of this Agreement, Seller shall prepare and deliver to Buyer an inventory list itemizing the FF&E and identifying any items that are excluded from the FF&E as set forth in Section 1(k) hereof. The inventory list itemizing the FF&E to be conveyed will be attached hereto at Closing as Schedule 1(b). The purchase price of the FF&E shall be \$100,000, increased by Seller’s cost of any additional special tools required by Manufacturer which are acquired by Seller after the date of this

Agreement but before the Closing Date. Seller shall maintain the FF&E in good working condition until Closing, reasonable wear and tear excepted. At Closing, the FF&E shall be conveyed to Buyer free of any encumbrances (unless otherwise agreed by Buyer), **“as is, where is,” and with all faults.**

(c) Used Vehicles. All of Seller’s inventory of Used Vehicles (including company-owned vehicles used for service, delivery, shuttle, “loaner,” or other such purposes, which collectively are called herein “*company vehicles*”) as of the Inventory Date, updated through Closing, as provided in this section 1(c). As used in this Agreement, a “*Used Vehicle*” shall mean any vehicle, regardless of model year, which has in excess of 7,500 miles registered on its odometer or which has been titled in any state or foreign country and that is included in Seller’s inventory of used vehicles or company vehicles on Seller’s books and records as of the Inventory Date.

To the extent reasonable, the purchase price of the Used Vehicle inventory shall be most current, lot ready, “clean trade-in” NADA Book Wholesale Value (“*NADA Value*”). At least five days before the Inventory Date, Seller shall prepare and deliver to Buyer an itemized list of the Used Vehicle inventory, designating Seller’s proposed sale price (reasonably based on current NADA Value) for each of the vehicles shown thereon. If Buyer disagrees with the sale price proposed by Seller for one or more vehicles, then Buyer shall so inform Seller, proposing an alternate sale price (reasonably based on current NADA Value) for each of such “unagreed value” Used Vehicles. Seller and Buyer thereafter shall negotiate in good faith based on industry standards and practices to determine a mutually-agreeable price for such “unagreed value” Used Vehicles using, if necessary, the services of one or more reputable wholesalers reasonably appointed by Seller to substantiate the prices being negotiated. Buyer shall not be obligated to purchase any “unagreed value” Used Vehicles unless Buyer ultimately agrees, in Buyer’s sole discretion, with its purchase price.

Notwithstanding anything in this Agreement to the contrary, Seller reserves the right to exclude from the Used Vehicle inventory to be conveyed to Buyer hereunder any of the vehicles in the Used Vehicle inventory, provided that Seller so informs Buyer, on or before the Inventory Date, of the specific vehicle(s) to be so excluded.

The inventory and prices of all Used Vehicles to be purchased by Buyer will be attached hereto at Closing as Schedule 1(c).

(d) New Vehicles. All new Mitsubishi vehicles (2016 [if any] and 2017 models), including demonstrators (the “*New Vehicles*”), for which Seller has original manufacturer statements of origin (“*MSOs*”), which can be sold as new vehicles in Utah and are not registered as sold with Manufacturer. All New Vehicles unsold and in transit from Manufacturer shall be included in the New Vehicle inventory. The New Vehicles shall be valued at factory invoice, **plus** dealer installed parts and accessories at dealer’s actual cost, **less:** (i) any factory holdbacks, rebates, carryover model allowances, and any other adjustments, paid, payable, credited or to be credited to Seller, which shall be deducted to establish Seller’s actual net cost for such New Vehicles, provided that only one-half of any advertising credits and one-half of any floor plan interest credits on those New Vehicles in stock at Closing shall be so deducted; (ii) the actual cost of replacing any missing parts, accessories and other items (such as

spare tires, jacks, and the like); (iii) the actual cost of repairing New Vehicles with damage identified and priced prior to Closing; and (iv) an additional \$.35 for each odometer mile from 350 to 7,500. The inventory, itemization and prices of New Vehicles to be purchased by Buyer will be attached hereto at Closing as Schedule 1(d).

(e) Assumed Contracts. Buyer may assume in its discretion, as of the Closing Date, any and all ordinary course of business obligations of the Dealership, including, without limitation, computer system leases and any or all other leased or rental equipment reasonably necessary to the operation of the Dealership. The assignment by Seller or Landlord, as applicable, and assumption by Buyer of the leases and executory contracts related to the Business (collectively, the “Assumed Contracts”) shall be described on attached Schedule 1(e). Except as set forth on attached Schedule 1(e), Buyer **IS NOT** assuming any obligations or liabilities of Seller. All Assumed Contracts must be terminable with no more than 30 days' notice without cost or other liability to Seller, Landlord, Buyer, or their successors; provided that Buyer shall be responsible for verifying such termination right before the Due Diligence Deadline (defined below). At Closing, Seller or Landlord, as applicable, shall assign and Buyer shall assume the Assumed Contracts, and Buyer shall indemnify and hold harmless Seller and Landlord from and against any obligations thereunder from and after Closing.

Seller represents and warrants that neither Seller nor Landlord, as applicable, has encumbered any Assumed Contract or the property that is the subject of any Assumed Contract; that Seller and Landlord, as applicable, has in all material respects performed each and every obligation required of them under each Assumed Contract; that neither party to any Assumed Contract, to the best of Seller's current actual knowledge without inquiry or due diligence, is in breach, in any material respect, of such Assumed Contract; that there are no existing or ongoing disputes between Seller and any other party to any of the Assumed Contracts; and that Seller has provided, or will provide, true and correct copies of the Assumed Contracts in effect as of Closing. Seller and Landlord, as applicable, shall indemnify and hold harmless Buyer from and against claims relating to the Assumed Contracts to the extent arising prior to Closing.

(f) Miscellaneous Office Supplies. All miscellaneous office supplies, forms, point of sale brochures, factory brochures, manufacturer displays, and the like owned by Seller and on hand as of Closing, the price of which shall be at Seller's actual cost. The inventory, itemization and prices of such supplies, etc. to be purchased pursuant to this Section 1(f) shall be attached hereto at Closing as Schedule 1(f).

(g) Work-in-Progress. Work-in-progress (labor and parts) and all sublet work done within five business days before Closing shall be valued at Seller's actual cost, provided such items are current and collectible. An inventory, itemization and prices will be attached hereto at Closing as Schedule 1(g).

(h) Goodwill and Covenant Not to Compete.

(i) The goodwill of Seller, including its name(s) (“Salt Lake Mitsubishi” and any other business names used in connection with the Dealership), telephone numbers, fax numbers, website domain name, customer lists and customer database, authorization to give Buyer access to Seller's DMS system, and the opportunity to acquire

Seller's franchise from Manufacturer and all rights thereunder for a price equal to \$499,000 **minus** (A) \$100,000 (i.e., the purchase price of the FF&E), and (B) the purchase price of the Parts.

(ii) Seller's and Mr. Malouf's covenant not to compete with the Business as set forth in Section 3(o) hereof for the sum of One Thousand Dollars (\$1,000).

(i) Shop Supplies. Such oil, gas, grease, and similar shop supplies to be priced at Seller's actual cost, with an inventory to be taken jointly by Seller and Buyer on the Inventory Date. An inventory, itemization and prices will be attached hereto at Closing as Schedule 1(i).

(j) Purchase Orders. All of Seller's purchase orders and customer deposits as of Closing, at no cost to Buyer.

(k) Assets Not Sold. Notwithstanding anything to the contrary hereinabove, the following assets and properties shall be retained by Seller and shall not be sold or transferred to Buyer pursuant to this Agreement: accounts and notes receivable; prepaid insurance and other prepaid assets (other than customer deposits and prepayments for service work in process); dealer finance reserves; earned factory rebates relating to vehicles sold prior to Closing; earned credits relating to vehicles sold prior to Closing; manufacturer holdbacks or other allowances or incentives relating to vehicles sold prior to Closing; bank deposits and cash; rebates for advertising expenditures by Seller eligible under any Manufacturer advertising fund program; and any other assets (including items of furniture, fixtures and equipment owned by Mr. Malouf or his family that currently are located at Seller's business premises) that are listed on Schedule 1(k), to be attached hereto at Closing.

(l) No Obligations Assumed. Except as otherwise specifically set forth herein, Buyer **IS NOT** assuming any liabilities of Seller in connection with the transaction set forth in this Agreement and Seller shall remain responsible for all of its liabilities arising prior to the Closing Date or as a result of Seller's actions on the Closing Date. Buyer agrees to handle, however, at Seller's cost and expense at Buyer's then standard rates for Manufacturer warranty work, all of Seller's customer complaints, "make goods," "comebacks" (during Seller's customary period for non-warranty work) and the like arising out of service performed by Seller prior to Closing, and which would normally be covered under Seller's applicable good customer relations and adjustments; provided, with regard to all such complaints, "comebacks" and the like, Seller shall have the right to deal (jointly with Buyer) directly with the subject customer concerning the complaint and to review and approve all such charges in advance, which approval Seller will not unreasonably withhold or delay. Seller agrees to promptly reimburse Buyer for the Seller-approved cost of such items.

(m) Customer Deposits and Obligations. Any deposits paid to the Dealership prior to Closing and any obligations owed to Dealership customers for services or products sold prior to Closing (e.g.—service contract cancellations, policy adjustments, etc.) are obligations of Seller and shall reduce the total Purchase Price to be paid by Buyer hereunder.

(n) Warranty Programs. All liabilities and obligations of Seller pursuant to any extended service/warranty programs, GAP insurance, credit life insurance or the like (the

“Warranties”) offered by Seller or an affiliated entity (but not Manufacturer) to Seller’s customers are Seller’s sole responsibility, and Seller shall indemnify and hold harmless Buyer from and against all costs, damages, actions and liabilities relating to the same. Notwithstanding the foregoing, Buyer (at its sole option) may elect at Closing to undertake in writing responsibility for all or part of the Warranties, in which case (i) Seller promptly shall provide to Buyer complete copies of all “deal jackets” (files containing all documentation relating to the sale of the subject vehicle, warranty, etc.); and (b) the Purchase Price for the Assets shall be reduced by an amount that is mutually acceptable to Buyer and to Seller and that reasonably reflects the liability so undertaken by Buyer.

Without in any way limiting the foregoing, if any of the Warranties that were not expressly assumed by Buyer are voluntarily or involuntarily cancelled, revoked or rescinded after Closing and the customer owning such warranty demands from Buyer any refund as a result of such cancellation, then Buyer promptly shall so notify Seller. Within ten business days after such notice from Buyer, Seller shall remit to Buyer, for prompt payment to such customer, the full undisputed amount of such claimed refund. If Seller disputes such customer’s right to all or any portion of such claimed refund, then within such ten days Seller shall notify Buyer in writing of the basis for Seller’s refusal to fully pay such refund and thereafter shall expeditiously and cooperatively work with Buyer and the customer to resolve such dispute in an amicable manner with an eye to preserving Buyer’s business relationship with such customer.

(o) Allocation. Within 60 days after Closing, Seller may prepare, and submit for Buyer’s reasonable approval, an allocation of the Purchase Price (as defined below) among the acquired Assets based upon their relative fair market values in accordance with Section 1060 of the Internal Revenue Code of 1986, as amended (the “Code”) and the Treasury regulations thereunder (and any similar provision of state law, as appropriate). Such allocation shall be based on the purchase price of such items as set forth in this Agreement. Without in any way limiting the foregoing, Seller also may cause the portion of the Purchase Price that is attributable to goodwill under section 1(h) to be re-allocated between so-called “corporate goodwill” of Seller and “personal goodwill” of Seller’s principals based on an expert study conducted at Seller’s cost. Buyer and Seller shall report, act, and file tax returns (including, without limitation, Internal Revenue Service [“IRS”] Form 8594) in all respects and for all purposes consistent with such allocation. The parties shall each timely and properly prepare, execute, file and deliver all such documents, forms and other information as either party may reasonably request to prepare such allocation. Neither Buyer nor Seller shall take any position (whether in audits, tax returns or otherwise) that is inconsistent with such allocation unless required to do so by applicable law.

Section 2. Conditions Precedent; Closing.

(a) Conditions of Buyer’s Obligation to Close. Buyer’s obligation to consummate the transactions contemplated by this Agreement is subject to the fulfillment (or the waiver thereof by Buyer in writing) of the following conditions on or before the Closing Date:

(i) Issuance of New Dealer Agreement. The approval of this transaction and the issuance of (or written commitment to issue) a dealer sales and service agreement (the “New Dealer Agreement”) by Manufacturer at 3734 South State Street, Salt Lake City, UT under customary and usual terms generally contained in Manufacturer’s standard dealer

agreement. Within five business days after the date of this Agreement, Buyer shall file an application (and all related papers reasonably known by Buyer to be required in connection with such application) with Manufacturer for the New Dealer Agreement. Thereafter, both Buyer and Seller shall diligently and expeditiously pursue the same and shall severally use their diligent, good-faith efforts to have the New Dealer Agreement issued within 60 days thereafter. Seller and Buyer shall notify each other promptly of the receipt of Manufacturer's written approval of Buyer to become an authorized dealer of Manufacturer at the Realty (the "*Approval*").

(ii) Condition of Title. Buyer shall be reasonably assured that, as of Closing, Buyer will receive legal title to and right of possession of the Assets as contemplated in this Agreement.

(iii) Realty Lease. Landlord shall have agreed to lease the Realty to Buyer or its designee pursuant to a written lease agreement (the "*Lease*") on such commercially reasonable terms and conditions as Buyer may propose, and Manufacturer shall have consented to the continued location of the Dealership on the Realty. The initial term of the Lease shall be five years, and shall grant to Buyer the option to extend the Lease term for up to three additional extensions of five years each. The monthly rent for the first three years of the Lease shall be \$13,500. Such rent shall increase a flat 2% each lease year thereafter, compounded, until the tenth anniversary of this Lease, when the monthly rent shall be adjusted (increased or decreased) to reflect the then fair rental value of the Realty as reasonably, mutually agreed by the parties or, failing such agreement, as determined by an appraisal of the Realty performed at the parties' joint cost by an MAI appraiser (selected by Buyer and reasonably acceptable to Seller) with expertise in determining the fair rental value of similar commercial properties. The monthly rent for the Realty as so adjusted on the tenth anniversary of the Lease shall be increased at a flat 2% each lease year following the 13th anniversary of this Lease. Simultaneous closing of all of the transactions and documents contemplated by the Lease is a condition precedent to Closing of Buyer's purchase of the Assets hereunder.

(iv) Manufacturer's Parts Programs. Seller shall have assigned to Buyer its termination rights under the Dealer Agreement with Manufacturer and any and all of Seller's rights (to receive payments of money or otherwise) under the Parts Programs.

(v) Seller's Representations. All representations made hereunder by Seller shall be true, accurate and correct as of Closing and there shall be no breach in the warranties or covenants made hereunder by Seller.

(vi) Execution and Delivery of Documents. Seller shall have executed and delivered to Buyer any and all documents required, necessary or reasonably requested by Buyer to consummate the transactions contemplated by this Agreement.

(vii) Delivery of Records, Books, Etc. Seller shall have delivered to Buyer such records and books relative to the Assets as are necessary for Buyer to make an orderly transfer of the Assets.

(viii) Delivery of Bills of Sale and/or Titles for the Assets. Seller shall have executed and delivered to Buyer appropriate bills of sale, assignments and other conveyance documents for the Assets, as well as appropriate documents required by the

respective flooring lenders to transfer to Buyer the MSO or certificate of title for each vehicle conveyed hereunder, all free and clear of all liens and encumbrances unless otherwise provided herein.

(ix) Compliance with Obligations. Seller shall have materially complied with all of Seller's obligations to be performed hereunder prior to or as of Closing, as appropriate.

(b) Conditions of Seller's Obligation to Close. Seller's obligation to consummate the transactions contemplated by this Agreement is subject to the fulfillment (or the waiver thereof by Seller in writing) of the following conditions on or before the Closing Date:

(i) Compliance with Obligations. Buyer shall have materially complied with all of Buyer's obligations to be performed hereunder, including the payment of the Purchase Price, prior to or on the Closing Date, as appropriate.

(ii) Buyer's Representations. All representations made hereunder by Buyer shall be true, accurate and correct as of the Closing Date and there shall be no breach in the warranties or covenants made hereunder by Buyer.

(iii) Delivery of Documents. Buyer shall have executed and delivered to Seller any and all documents required or necessary to consummate the transactions contemplated by this Agreement.

(c) Closing. Closing ("Closing") of the transactions contemplated by this Agreement and the Lease shall occur at such place in Salt Lake County, UT, and on such date and at such time as Buyer reasonably may designate; provided that Closing shall occur within five business days after the date upon which Buyer receives the Approval. If the Approval is not issued by Manufacturer by the date that is 60 days after the effective date of this Agreement, then either party may extend the deadline for Buyer to receive the Approval for an additional 30 days upon written notice to the other party. If the Approval is not received by Buyer within such 30-days extension period, then either party may terminate this Agreement, without liability to either party, upon at least ten additional days' prior written notice and opportunity to cure to the other party. In the event of such non-approval by Manufacturer, the parties agree that the Deposit (defined below) shall be refundable and shall be paid to Buyer within three business days after Seller's receipt of written notice from Buyer (i) notifying Seller of Manufacturer's non-approval and (ii) demanding refund of the Deposit as provided herein.

(d) Payments at Closing. At Closing, Buyer shall pay to Seller the following sums (collectively, the "Purchase Price"):

(i) Parts, Vehicles, Etc. Cash for the Parts, Used Vehicles, New Vehicles, office supplies, work-in-progress and shop supplies, in such amounts as are set forth in Section 1 and Schedules 1(a), 1(c), 1(d), 1(f), 1(g) and (1)(i) hereto respectively;

(ii) FF&E. \$100,000 cash for the FF&E.

(iii) Goodwill. The purchase price, in cash, specified in paragraph 1(h) for the goodwill, covenant not to compete and other items described in paragraph 1(h); and

(iii) Other Amounts. Any other amounts required by this Agreement.

(e) Deliveries and Actions at or Prior to Closing. At (or, if specified below, prior to) Closing, the parties shall deliver and exchange the following, in addition to performing all other deliveries, exchanges and actions required by this Agreement:

(i) Deposit. Within three business days after the date of this Agreement, Buyer shall deposit the sum of \$10,000.00 (the "*Deposit*") into escrow with a mutually acceptable escrow agent (the "*Escrow Agent*") as a deposit against the Purchase Price under this Agreement. Such deposit shall be subject to mutually agreeable escrow instructions prepared by Buyer and reasonably acceptable to Seller. The total purchase price to be paid by Buyer at Closing under this Agreement shall be reduced by the full amount of the Deposit previously paid to or on behalf of Seller. The Deposit shall be refundable to Buyer only if Closing fails to occur due to (A) Seller's default under this Agreement (and failure to cure such default within ten days after Seller's receipt of written notice from Buyer specifying such default, or, if such default cannot reasonably be cured within such ten days, then Seller fails to commence to cure such default within such ten days and thereafter diligently completes such cure), (B) Buyer's termination of this Agreement prior to the expiration of the Due Diligence Deadline as and if extended, or (C) failure of one of Buyer's conditions precedent to Closing specified in Section 2(a), above. Once refundability of the Deposit is so established, Title Company shall return the Deposit to Buyer within three business days following receipt of Buyer's written request.

(ii) Conveyances. Seller shall deliver the Assets, and shall execute and deliver to Buyer such bills of sale, assignment and assumption agreements, and other conveyance documents as Buyer reasonably may require, conveying the Assets to Buyer free and clear of claims, liens or encumbrances, except those claims, liens and encumbrances being expressly assumed by Buyer herein and those claims, liens and encumbrances arising after the date of Closing. All obligations under the Assumed Contracts arising before the date of Closing shall remain the sole and exclusive responsibility of Seller. Such conveyance documents shall be prepared by Seller and be in a form reasonably acceptable to Buyer.

(iii) Purchase Price. Buyer shall pay to Seller the full Purchase Price (with credit for the Deposit as provided above) in cash or cash-equivalent, immediately available funds.

(iv) Approval. Buyer shall deliver the Approval.

(v) Customer Lists, Etc. Seller shall deliver all of Seller's customer lists and customer contact information.

(vi) Governmental Approvals. Buyer shall deliver to Seller any consents, licenses, authorizations or approvals required by any state or local governmental body regarding the transactions under this Agreement.

(vii) Company Authorizations. Each party shall deliver to the other evidence to the reasonable satisfaction of the other or its counsel of proper action by that party's equity owners and governing body authorizing or ratifying the execution of this Agreement and the consummation of the transactions contemplated hereby.

(viii) Other Documents and Actions. The parties shall execute and deliver such other documents and instruments, and perform such additional actions, as Seller or Buyer shall reasonably request in order to carry out the intent, purpose and terms of this Agreement.

(ix) Tax Clearance. Seller shall obtain and deliver to Buyer a certification from the Utah State Tax Commission that Seller's sales and use tax liability related to operation of the Business prior to Closing is paid in full. The effective date of such certification shall be as near to the date of Closing as reasonably feasible without material additional cost or expense.

(x) Prorations. Income and expenses of the Dealership (including utilities, third party services, Assumed Contracts, etc.) shall be prorated as of Closing.

Section 3. **Representations, Warranties and Covenants of Seller**. Subject to any exceptions and disclosures which may be contained herein or in schedules attached hereto, Seller represents, warrants and covenants to Buyer that at the time of Closing:

(a) No Restrictions. Except for Assets subject to lease obligations as described in Schedule 1(e), and subject to any right of first refusal, purchase option or similar right of Manufacturer to acquire the Business and/or the Assets (a "*Manufacturer Right*"), Seller owns all the Assets to be sold hereunder, and at Closing the Assets will be delivered to Buyer free and clear of all restrictions and/or conditions to transfer or assignment, claims or right of any other person or entity, or defects in title, and free and clear of mortgages, liens, pledges, encumbrances, equities, covenants, conditions or restrictions.

To Seller's current actual knowledge without due diligence, all New Vehicles sold to Buyer shall be in the computer inventory of Manufacturer and not previously sold. Subject to any Manufacturer Right, Seller has full power to sell and transfer the Assets without obtaining the consent or approval of any other person or entity, other than the Approval and any approval which may be required by the Utah Department of Motor Vehicles, which shall have been obtained prior to Closing.

To Seller's current actual knowledge without inquiry or due diligence, the transfer of the Assets to Buyer at Closing will not (i) violate any provision of the applicable articles of incorporation, bylaws or similar governance documents of Seller, (ii) violate the provisions of any material note, mortgage, lien, lease, agreement, obligation, instrument of arbitration, award, judgment or decree to which Seller or the Assets are subject or a party, (iii) conflict with, result in a breach of any provision of, constitute a default under, result in the modification or cancellation of, or give rise to any right of termination or acceleration in respect of, any Assumed Contract, (iv) require any consent or waiver of any party to an Assumed Contract, (v) result in the creation of any lien

or encumbrance upon any properties, assets or rights of Seller to be sold, transferred and/or assigned to the Buyer hereunder, (vi) violate or conflict with any Laws (as defined in subsection (i) below) applicable to Seller or its business or, properties, or (vii) require any authorization, consent, order, permit or approval of, or notice to, or filing, registration or qualification with, any governmental, administrative or judicial authority.

(b) Cooperation. Seller shall reasonably cooperate with Buyer to establish the prices for the Assets as provided in Section 1 hereof. On a reasonable basis and as requested by Buyer, from the date of this Agreement until the Closing Date Seller will help advise Buyer on the operation of a Mitsubishi franchise and the sale of vehicles in the market area. Seller shall expeditiously and fully cooperate with Buyer's efforts to obtain the Approval and the issuance to Buyer or its designee, as soon as possible, of a New Dealer Agreement from the Manufacturer.

(c) Truth of Statements. No representations or statements made by Seller or on its behalf contain or will contain any untrue statement of a material fact or, to Seller's current actual knowledge without due diligence, fail to state any material fact regarding the Assets, which fact would be necessary to make such representations, warranties or statements not materially misleading to Buyer.

(d) Default. To Seller's current actual knowledge without due diligence, upon the receipt of the Approval and any approval required of the Utah Department of Motor Vehicles, the consummation of the transactions contemplated by this Agreement will not result in or constitute any of the following that would materially, adversely affect the Assets, the Business or the transactions contemplated herein:

(i) A default or event that, with notice or lapse of time or both, would be a default, breach or violation of the articles of incorporation or bylaws of Seller or any license, promissory note, conditional sales contract, commitment, indenture, mortgage, deed of trust, dealer agreement or other agreement, instrument or arrangement to which Seller is a party or by which the Assets are bound.

(ii) An event that would permit any party to terminate any agreement or to accelerate the maturity of any indebtedness or other obligation of Seller; or

(iii) The creation or imposition of a third party lien, charge or encumbrance on any of the Assets.

(e) Good Standing. Seller is validly existing in good standing under the laws of Utah, has all regulatory authorizations and permits necessary to operate the Business, and is duly qualified to do business from and at the Business premises.

(f) Title/Condition. Except for any leased Assets identified on Schedule 1(e), Seller has good and marketable title to the Assets and interests in the Assets being purchased by Buyer, whether real, personal, mixed, tangible or intangible, which constitute all or substantially all of the Assets and interests in the Assets in the Business. To Seller's current actual knowledge without inquiry or due diligence, all of the FF&E is in good operating condition and repair

except for ordinary wear and tear attributable to the routine and ordinary day-to-day conduct of the Business.

(g) Financials. The financial statements of Seller and its affiliates have been prepared in accordance with the form required by Manufacturer and, to the best of Seller's current actual knowledge without inquiry or due diligence, in accordance with general accepted accounting principles, and fairly and accurately reflect the financial condition of the Seller and its affiliates.

(h) Contracts. Except as disclosed in this Agreement (including its schedules and exhibits), Seller is not a party to any written or oral (i) contract not made in the ordinary course of business, (ii) contract with any labor union, (iii) advertising contract or contract for public relations services, (iv) continuing contract for the purchase of materials, supplies or equipment, or (v) contract continuing for a period of more than 30 days or which is not terminable without cost or other liability to Seller, or its successors, which relates to the operation of the Business or the Assets.

(i) Laws. To Seller's current actual knowledge, but without due diligence or inquiry,

(i) Seller and the Business has each complied with, and is not in violation of, applicable Federal, State or local statutes, laws and regulations affecting the Assets, the Realty, or the operation of the Business.

(ii) Seller and Landlord are in compliance with all zoning laws affecting the use by the Dealership of the Realty and there are no zoning variances or conditional use permits affecting the Realty.

(iii) Seller and the Business meet the requirements established by all regulatory agencies governing its operations, including but not limited to the Utah Department of Motor Vehicles, city and or other county permits and license departments, the Environmental Protection Agency and all other governmental authorities.

(iv) During Seller's occupancy of the Realty there has not been (A) any use, treatment, storage or disposal of any hazardous substance or material (as defined in 42 U.S.C. § 9601(14) and 40 C.F.R. § 302.4) or pollutant by Seller on the Realty or in connection with the Assets except in the ordinary course of business and in accordance with all applicable laws, (B) any spill, leakage, discharge or release of any hazardous substance or material or pollutant thereon or therefrom by Seller or that relates to the Assets or the Realty, or (C) any off-site disposal by Seller of any hazardous substance or material or pollutant in any location except in accordance with all applicable laws. Seller has not purchased or sold asbestos, asbestos containing products or materials or any other hazardous substance except in compliance with law. Seller is not subject, nor is there any current basis for Seller to be subject, to any liability or claim in connection with any environmental law or any use, treatment, storage or disposal of any hazardous substances or pollutant or any spill, leakage, discharge or release of any hazardous substance or pollutant as a result of Seller having owned or operated the Business or any other business.

(j) Litigation. There is no claim, suit, action, counterclaim, cross claim, arbitration or legal, administrative or other proceeding or governmental investigation pending or, to Seller's best knowledge, threatened against or affecting the Assets, Seller or the Business. To Seller's current actual knowledge without due diligence, Seller is not in default or in violation with respect to any order, writ, injunction or decree issued by any federal, state, local or foreign court or regulatory authority affecting the Business, Seller or the Assets.

(k) Liabilities. Seller has no debt, liability or obligation of any nature, whether accrued, absolute, contingent or otherwise, whether due or to become due that would have a material, adverse effect on the transactions contemplated by this Agreement or act as a lien or encumbrance on the Assets. Neither Seller nor the Business has made or guaranteed any buybacks of any vehicles. Seller shall satisfy or adequately provide for all creditors of the Business prior to or as of Closing, including, without limitation, flooring liability and all federal, state and local taxes.

(l) Warranties. Seller does not have, and has not agreed to accept for others, any warranty or service obligations to any third party and Seller has not offered its customers any marketing or added-value programs or plans for which Seller is responsible for administration or the liability thereof, including, but not limited to programs commonly called "tires for life," "oil changes for life," "car wash/detailing service plans," or "rewards programs," or any similar customer incentive program.

(m) Taxes. No governmental authority is now asserting or, to the knowledge of Seller, threatening to assert any deficiency or assessment for additional taxes, interest, penalties or fines with respect to Seller, the Dealership, the Realty or the Assets. There are no liens on the Assets due to Seller's failure to timely file tax returns or to pay any governmental taxes or impositions of any type, nor is there any basis for any such lien(s).

(n) Binding Obligation. This Agreement and the documents to be delivered or executed at Closing have been, or will be, duly executed and delivered and are, or will be, the lawful, valid and legally binding obligation of Seller, enforceable against Seller in accordance with their respective terms. Subject to obtaining the Approval, the execution, delivery and consummation of this Agreement are not prohibited by and, to Seller's current actual knowledge without due diligence, do not violate or conflict with any provision of and will not result in a default under, a termination of, an acceleration of, or a breach of: (i) any material contract, agreement or other instrument to which Seller is a party; (ii) any regulation, order, decree or judgment of any arbitration panel, court or governmental agency; and (iii) to the best knowledge of Seller, any other restriction of any kind to which Seller is subject.

(o) Negative Covenants of Seller Pending Closing. From the date of this Agreement to Closing, Seller will not cause or make, except in the ordinary course of the Business, or except with Buyer's written consent, any:

- (i) material change in the manner of conducting the Business;

(ii) loan or commitments to make loans, or capital expenditures by Seller which would create a lien upon or have any adverse impact on the Assets or Seller's ability to complete the transactions contemplated hereby;

(iii) sale or transfer of any of the Assets;

(iv) amendment, release or voluntary termination of any contract, agreement, lease, insurance policy, bonding agreement, license or dealer agreement to which Seller is a party;

(v) mortgage, pledge or other encumbrance of any of the Assets;

(vi) any other contract, commitment or transaction affecting the Assets or Seller's obligations hereunder;

(vii) material adverse change in the financial condition, liabilities, assets, business or prospects of Seller, including the telephone number of the Business (which Seller agrees to release to Buyer upon Closing, subject to Buyer paying all future accruing telephone charges with regard thereto, but with no liability on Buyer's part for accrued advertising charges);

(viii) material increase in the salary or other compensation payable or to become payable by Seller to any of its agents, employees or consultants, or the declaration, payment or commitment or obligation of any kind for the payment by Seller of a substantial bonus or other additional salary or compensation to any such person, or any deferred compensation agreement for any such person;

(ix) material change in, perform any act or fail to perform any act which would render any of the representations or warranties in this Section 3 untrue or inaccurate or incomplete as of Closing; or

(x) purchase or otherwise acquire any Used Vehicles without attempting to obtain Buyer's approval of any Used Vehicles to be acquired between the Used Vehicle inventory valuation date and Closing.

(p) Non-Compete. For two years after Closing, Seller and its principal, Mr. Malouf, agree and covenant not to compete with the Business in the sale of new Mitsubishi vehicles or to actively solicit (by phone, mail or other direct advertisement) to work for Seller any employees of Seller who come to work for Buyer, or to solicit (by any of the means described above) any customers, or potential customers, for the Business in the sale of new Mitsubishi vehicles, nor use the name "Salt Lake Mitsubishi," or any part or variation respectively thereof, for any purposes, business or otherwise, within a radius of 100 miles from the Realty. Notwithstanding the foregoing, however, Seller shall have a reasonable time after Closing to file appropriate amendments with the Utah Department of Commerce changing Seller's corporate and assumed names to new names not utilizing the words "Mitsubishi."

Section 4. **Representations, Warranties and Covenants of Buyer**. Subject to any exceptions and disclosures which may be contained herein or in schedules attached hereto, Buyer represents, warrants and covenants to Seller that at the time of Closing:

(a) **Authority**. Buyer has the right, power, legal capacity and authority to enter into and perform Buyer's obligations under this Agreement.

(b) **Binding Obligation**. This Agreement and the documents to be delivered or executed at Closing have been, or will be, duly executed and delivered and are, or will be, the lawful, valid and legally binding obligation of Buyer, enforceable against Buyer in accordance with their respective terms. The execution, delivery and consummation of this Agreement are not prohibited by and do not violate or conflict with any provision of and will not result in a default under, a termination of, an acceleration of, or a breach of: (i) any material contract, agreement or other instrument to which Buyer is a party; (ii) to Buyer's best knowledge, any regulation, order, decree or judgment of any arbitration panel, court or governmental agency; and (iii) to Buyer's best knowledge, any other restriction of any kind to which Buyer is subject.

(c) **New Dealer Agreement**. To Buyer's best knowledge, Buyer is qualified to obtain the New Dealer Agreement. Buyer will diligently and in good faith pursue Manufacturer's approval of Buyer as an authorized Mitsubishi dealer in Salt Lake County, Utah at the Realty.

(d) **Financing**. Buyer has arranged adequate financing to consummate this Agreement.

(e) **Receivables**. Buyer will assist Seller as Seller may reasonably require and at Seller's expense to wind down the Business after Closing, including, without limitation, assisting Seller in the collection of Seller's accounts receivable attributable to the Business for periods prior to Closing, including Seller's warranty claims to Manufacturer. Seller shall provide Buyer with a list of those of Seller's accounts receivable as to which Seller desires Buyer's assistance, and all amounts received in payment of such accounts receivable shall be recorded as such, immediately upon receipt, and paid over to Seller in the form received in a timely fashion.

In the case of Seller's Manufacturer warranty claims and incentive payments attributable to periods prior to Closing, to the extent and if, as and when Manufacturer tenders any payment for Seller's warranty claims or incentive payments in the form of a credit to Buyer's Mitsubishi parts account or to Buyer's incentive account, Buyer shall refund to Seller on or before the tenth day of each month the net amount of all such credits received during the prior calendar month, accompanied by an accurate accounting of Seller's warranty claim or incentive credits represented by such refund. If payment is received by Buyer from a customer having account balances outstanding to both Seller and Buyer, any such payment shall be applied first to the oldest outstanding accounts receivable and continue to be applied to all accounts receivable on a first in first out basis. Buyer will assist Seller in the collection of Seller's accounts receivable attributable to the Business for periods prior to Closing, without cost or expense to Seller, for a period of six months following Closing.

(f) **Suits and Proceedings**. There are no suits or proceedings pending or, to Buyer's best knowledge, threatened in any court or before any administrative board,

commission, or by any federal, state or other governmental department or agency, which directly or indirectly affect or involve Buyer and which, if determined adversely, would have a material adverse effect on the transactions contemplated by this Agreement.

(g) Third Party Approvals. Except as otherwise specified in this Agreement, to Buyer's best knowledge, no consents or approvals of any third party or parties are required prior to the execution, delivery and performance by Buyer of this Agreement and the other documents contemplated hereby.

(h) Cooperation; Access to Records. Buyer shall reasonably cooperate with Seller to establish the prices for the Assets as provided in Section 1 hereof and as otherwise reasonably requested by Seller to accomplish tasks and make decisions to facilitate Closing. For at least two years following Closing, Buyer shall provide to Seller and its bookkeeper, accountant, and other agents unimpeded access to the Dealership's books and records for the period prior to Closing as may be reasonably requested by Seller in connection with the winding up of Seller's business, related tax filings, etc. Until the second anniversary of Closing, Buyer shall endeavor to provide at least 60 days' prior written notice to Seller of any change in Buyer's software or hardware systems that may adversely affect Seller's ability to access data relating to pre-Closing operation of the Dealership.

Section 5. **Seller's Pre-Closing Obligations**. From the date of this Agreement until Closing:

(a) Performance. Seller shall perform, abide by and adhere to all representations and warranties set forth in this Agreement and not perform any act or fail to perform any act which would render any of the representations or warranties in Section 3 untrue or inaccurate or incomplete as of Closing.

(b) Assistance With Approval. Seller shall diligently and in good faith assist and cooperate with Buyer, but without any obligation to incur any material cost, in Buyer's application to become an authorized Mitsubishi dealer. Upon full consummation of Closing, Seller shall deliver to Manufacturer a letter of resignation (in form reasonably satisfactory to Manufacturer and Buyer) terminating Seller's working agreement with Manufacturer, whereupon Seller shall have no further obligation to Manufacturer or to Buyer, except as otherwise specified in this Agreement.

(c) No Damage. Seller shall use its best efforts not to damage any asset of Seller (whether or not covered by insurance) that materially and adversely affects its financial condition, the Assets, the Business or its prospects.

(d) Adverse Effect. Seller shall use its best efforts to conduct the business of the Dealership only in the ordinary and usual course and substantially in accordance with its prior business practices, with a view to maintaining the Dealership's goodwill, Assets, customer relations and business reputation. Seller shall use commercially reasonable efforts to prevent any other event or condition of any character that has or might reasonably have a material and adverse effect on the financial condition of Seller, the Business, the Assets or prospects of Seller.

(e) Employee Compensation. Without Buyer's prior consent (which shall not be unreasonably withheld or delayed), Seller shall not engage or employ any new employees not reasonably necessary or increase the rate of compensation payable, or to become payable, to any present employee, or pay any bonus or extraordinary compensation to any such employee, other than reasonably pay increases, bonuses and other compensation practices in the normal course of business.

(f) Access to Information. Seller shall provide to Buyer (and Buyer's counsel, accountants and other representatives), without charge, full and complete access (in such manner so as not to unreasonably interfere with the normal conduct of Seller's business) to the books, records and information of Seller concerning the Assets which is reasonably necessary for the orderly transfer of the Assets and the consummation of the transactions contemplated by this Agreement.

Section 6. **Employees**. Seller shall terminate the employment of all of employees of the Dealership effective as of Closing; shall assume and be solely responsible for the liability of all existing employees' vacation, sick leave, compensation and other benefits accrued as of Closing; and shall cooperate with Buyer in encouraging all such employees to apply for employment with Buyer.

Section 7. **Termination**.

(a) By Buyer Following Due Diligence. Buyer shall have a period of 45 days after the effective date of this Agreement (the "*Due Diligence Deadline*") to undertake due diligence and investigations concerning the Dealership and the Assets, including, without limitation, the public records, and financial records and tax returns of Seller and any other records pertaining in any way to the Assets being sold hereunder or any warranties and representations being given by Seller in this Agreement. Seller shall promptly cooperate, without liability or material cost, with Buyer's due diligence, including providing copies of the Assumed Contracts, copies of Seller's and all of its affiliates' financial statements, tax returns and schedules for at least the past five years, and access to Seller's and its affiliates' facilities, books and records, and all other access and documentation as Buyer reasonably may request to evaluate the Assets and the Dealership's business, conditioned on Buyer's agreement to keep the results of such investigations confidential to at least the same extent as Buyer safeguards the confidentiality of its own confidential, proprietary information. References to Seller's affiliates shall include the Landlord, and any and all warranty and/or service companies (off-shore or otherwise) and any and all other related companies that could impact the Assets and the Dealership's business. If Buyer, in its absolute discretion, is dissatisfied with the results of such due diligence, Buyer may freely terminate this Agreement and the Lease upon written notice that is received by Seller and Landlord at any time within 5 days after the expiration of the Due Diligence Deadline.

(b) Breach or Bankruptcy. Either party may terminate this Agreement upon written notice to the other party upon the occurrence of any material breach of any of the representations, warranties or covenants of the other party occurring on or prior to Closing which breach is not cured within the longer of any cure period specified elsewhere in the Agreement or ten days after written notice and opportunity to cure from the non-reaching party to the breaching

party. Further, if either party files for bankruptcy, voluntarily or involuntarily, on or before the date of Closing, the other party shall have the option to terminate this Agreement by written notice given at least 30 days following receipt of written notice of such filing.

(c) Failure of Condition Precedent. This Agreement also is terminable by a party upon non-occurrence of Closing due to failure of a condition precedent under Sections 2(a) or 2(b) above, as applicable.

In the event of termination of this Agreement, and except as provided in Section 8 below, neither party shall have any further liability hereunder, except such termination shall not excuse or eliminate any breaches of this Agreement which have occurred prior to such termination.

Section 8. **Remedies**. In addition to the termination rights under section 7 above, if either party fails to perform any of its obligations hereunder and such condition is not timely cured, such party shall be in default hereunder and the non-defaulting party shall be entitled to proceed at law and in equity to enforce its rights under this Agreement. Buyer's rights shall include, without limitation, the right to seek specific performance of this Agreement. Seller's rights shall include, without limitation, the right to retain the full Deposit as liquidated damages. In that regard, the parties recognize and agree that, due to the fluidity of the motor vehicle dealership market generally and the unique nature of the Business, the full extent of Seller's damages in the event of Buyer's breach of its obligation to close this transaction is difficult or impossible to measure, and that the Deposit represents the parties' best, good-faith estimate of Seller's damages arising from any such breach by Buyer.

Section 9. **Indemnification**.

(a) Seller's Indemnification. Seller shall indemnify, defend and hold harmless Buyer and Buyer's agents, transferees, successors and assigns from and against all claims, damages, actions, losses and expenses (including actual attorney's fees and expert witness fees) arising out of or that are caused in whole or in part by any material default or breach of any warranty, representation, or covenant of Seller in this Agreement.

(b) Comebacks. Seller shall reimburse Buyer, within 30 days of the date of invoice from Buyer, for all amounts reasonably paid or incurred by Buyer on charge backs or expenses related to customer complaints, warranty work, "comebacks", etc., as provided in section 1(l), above. Without limitation, Seller shall have the right to (i) participate, jointly with Buyer, in addressing and resolving the customer complaint, and (ii) approve or disapprove all such charges in advance. Buyer shall invoice Seller monthly for these Seller-approved charges.

(c) Buyer's Indemnification. Buyer shall indemnify, defend and hold harmless Seller and its agents, its designated nominee, transferee, successors and assigns from and against all claims, damages, actions, losses and expenses (including actual attorney's fees and expert witness fees) arising out of or that are caused in whole or in part by any material default or breach of any warranty, representation, or covenant of Buyer in this Agreement.

(d) Interest. All amounts due by one party to the other hereunder and not paid within ten days after the due date shall bear interest at the rate of 18% per annum until paid.

(e) Notice. Any party or parties seeking indemnification under this Section 9 (collectively, the “*Indemnatee*”) shall, on each occasion that indemnification is sought, give prompt written notice of any claim, suit or demand which the Indemnatee believes will give rise to indemnification to it hereunder (the person to whom such notice of claim is given is referred to herein as the “*Indemnitor*”). Except as hereinafter provided, the Indemnitor shall be obligated to defend and to direct the defense against any such claim, suit or demand, in its name or in the name of the Indemnatee, at the Indemnitor's expense and with counsel of the Indemnitor's own choosing (and reasonably acceptable to the Indemnatee), and the Indemnitor shall retain all rights to settle or compromise any such claim, suit or demand; provided, however, that the Indemnitor will not, without the Indemnatee's written consent, settle or compromise any claim, suit or demand or consent to any entry of judgment which does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Indemnatee of a release from all liability in respect of such claim, suit or demand in form and substance reasonably satisfactory to the Indemnatee. The Indemnatee shall, at the Indemnitor's expense, cooperate in the defense of any such claim, suit or demand. If the Indemnitor, within a reasonable time after notice of a claim, suit or demand fails to defend the Indemnatee, the Indemnatee shall be entitled to undertake the defense, compromise or settlement of such claim, suit or demand at the expense of and for the account and risk of the Indemnitor, utilizing counsel of the Indemnatee's own choosing.

Section 10. **Brokerage Fees and Sales Commissions**. The parties each represent there are no fees or commissions due with regard to the transactions set forth herein, and agree to indemnify and hold harmless one another from and against any loss, liability, damage, cost, claim or expense incurred by reason of any brokerage commission or finder's fee alleged to be payable to any finder or broker as a result of the party's conduct.

Section 11. **Costs**. Each of the parties shall pay all costs and expenses (including attorney's fees and accounting fees) incurred or to be incurred by them in negotiating, closing and carrying out the transactions contemplated by this Agreement. If any inventory service is used to conduct the inventories contemplated by this Agreement, any reasonable direct inventory expenses incurred as a result of using such inventory service shall be borne equally by Buyer and Seller and shall be paid at Closing.

Section 12. **Entire Agreement**. This Agreement, together with any schedules or exhibits attached hereto, constitute the entire agreement between the parties pertaining to the subject matter hereof and supersedes any prior agreements. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties. No waiver of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No such amendment, modification or waiver shall be binding unless executed in writing by the parties. Without limiting the generality of the foregoing, this Agreement supersedes the LOI, which is void and of no effect.

Section 13. **Counterparts**. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile, pdf or other electronic copy of this

Agreement or any counterpart thereto, and the signatures thereon, shall be valid to the same extent as a manually signed original.

Section 14. **Binding Effect; Assignment.** This Agreement shall be binding on and shall inure to the benefit of the parties to it and their respective heirs, legal representatives, successors and assigns. Buyer may assign its rights, and delegate its duties, under this Agreement to any qualified assignee designated by Buyer and reasonably approved by Seller; provided, however, that notwithstanding any such assignment or delegation by Buyer (with or without Seller's consent), the original Buyer shall continue to be fully responsible for, and shall guaranty, the full and timely payment and performance of all of Buyer's obligations under this Agreement.

Section 15. **Survival.** The several representations, warranties, indemnities, covenants and agreements of the parties contained in or made pursuant to this Agreement shall be deemed to survive Closing without limitation except as provided herein, and shall be binding upon the parties and their successors in interest.

Section 16. **Communications.** All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given (a) when delivered personally, (b) when received by the addressee, if sent by Express Mail, Federal Express or other express delivery service (receipt requested), or (c) three days after being sent by registered or certified mail, return receipt requested, in each case to the other party at the following addresses (or to such other address for a party as shall be specified by like notice; provided that notices of a change of address shall be effective only upon receipt thereof):

To Buyer: Salt Lake Auto Center, L.L.C.
7951 South State Street
Midvale, UT 84047

With copy to: Wm. Shane Topham
JONES WALDO HOLBROOK & McDONOUGH
170 South Main Street, Suite 1500
Salt Lake City, UT 84101

To Seller: SALT LAKE MITSUBISHI
Attn. Matthew P. Malouf
3734 South State Street
Salt Lake City, UT 84115

With copy to: _____

_____, ____

Section 17. **Governing Law; Dispute Resolution.** This Agreement shall be construed in accordance with and governed by the local laws of the state of Utah. Unless otherwise agreed to by Seller and Buyer, any dispute or controversy that arises between Buyer and Seller relating

to the terms and conditions of this Agreement, or the alleged breach thereof, shall be resolved by litigation in the Third Judicial District Court in and for Salt Lake County, Utah.

Section 18. **Attorney's Fees**. If any action or other proceeding is brought for the interpretation or enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party shall be entitled to recover its reasonable attorney fees, expert witness fees and other costs and expenses incurred in connection with such action or proceeding, whether incurred with or without suit, at trial, on appeal, or in any bankruptcy or insolvency proceeding.

Section 19. **Severability**. Notwithstanding anything contained herein to the contrary, if this Agreement is or may be deemed for any reason to violate Seller's dealer sales and service agreement with Manufacturer, in any manner whatsoever, then and in that event this Agreement shall be deemed modified, by consent of the parties, to the extent and in the manner necessary to reform this Agreement to comply with and not violate all relevant provisions of the said dealer sales and service agreement. Further, if any provision of this Agreement be void, voidable, unenforceable or invalid, such provision shall not affect the other provisions of this Agreement. Seller's inability to fulfill its obligations under this Agreement due to Manufacturer's exercise of a Manufacturer Right shall not constitute a default by Seller hereunder.

Section 20. **Confidentiality**. Until the Closing Date, Seller and Buyer (and all those under the parties' influence or control, legally or practically) shall use their diligent best efforts to keep absolutely confidential the existence and terms of this Agreement, provided that such prohibition shall not prevent a party from disclosing such matters to and Manufacturer, that party's key employees, lenders, attorneys and other third parties reasonably determined by the disclosing party to have a vested interest in, or "need to know" of, the transactions contemplated by this Agreement. Notwithstanding the foregoing, except as legally required or absolutely necessary to accomplish the purposes of this Agreement, none of the parties shall, either before or after Closing, discuss, disclose or release to third parties any of the relevant information, terms or amounts contained in this Agreement.

Section 21. **Time of Essence**. Time is the essence of this Agreement.

Section 22. **Captions**. The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

Section 23. **Waiver of Breach**. Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this Agreement.

Section 24. **Cumulative Remedies**. The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of, any other right, remedy or priority allowed by law.

Section 25. **Interpretation**. This Agreement is the result of arm's length negotiations

between, and the collaborative efforts of, sophisticated businessmen. Consequently, this Agreement shall be interpreted in an absolutely neutral fashion, with no regard to the identity of the “drafter” of this Agreement.

Section 26. **Amendment.** This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

DATED effective the date first above written.

SELLER:

SMART CARS, INC.,
d/b/a **SALT LAKE MITSUBISHI,**
a Utah corporation

By _____
Matthew P. Malouf, President

BUYER:

SALT LAKE AUTO CENTER, L.L.C.

By: _____
Gerald A. Zmyslo, Jr., Manager

LIST OF ATTACHED SCHEDULES AND EXHIBITS

Schedule 1(a)	New parts
Schedule 1(b)	FF&E
Schedule 1(c)	Used vehicles
Schedule 1(d)	New vehicles
Schedule 1(e)	Assumed Contracts
Schedule 1(f)	Office Supplies, Etc.
Schedule 1(g)	Work in Progress
Schedule 1(i)	Shop Supplies
Schedule 1(k)	Additional Seller-Retained Assets