

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

In re:

LYDIA CLADEK, INC.,

Case No. 3:10-bk-02805-PMG

Debtor.

(Consolidated by Prior Court Order with Case  
No. 10-bk-02800-PMG)

**ORDER (A) AUTHORIZING THE CHAPTER 11 TRUSTEE TO CONDUCT AN  
AUCTION, (B) APPROVING THE BIDDING PROCEDURES FOR THE AUCTION,  
INCLUDING PAYMENT OF A BREAK-UP FEE, (C) SCHEDULING DATES  
FOR THE AUCTION, SALE HEARING, AND OBJECTION DEADLINE  
AND (C) APPROVING THE FORM AND MANNER OF NOTICES**

This matter is before the Court on the motion of Michael Phelan, the chapter 11 trustee (the "Chapter 11 Trustee") of the consolidated chapter 11 cases of Lydia Cladek, Inc. (the "Debtor"), dated July 2, 2010 (the "Motion") for (A) and order (i) authorizing the Chapter 11 Trustee to conduct an Auction<sup>1</sup> for the sale of the Non-Performing Assets, (ii) establishing Bidding Procedures, including payment of a Break-Up Fee, (iii) scheduling dates for the Auction, Sale Hearing, and Objection Deadline, and (iv) approving the form and manner of notices, and (B) an order (i) approving the Asset Purchase Agreement, and (ii) approving the sale of the Debtor's Non-Performing Assets, free and clear of all liens, claims, encumbrances, and interests; and the Court having reviewed the Motion; and the Court having held an hearing on the Motion on July 27, 2010 (the "Hearing"); and the Court finding that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) notice of the Motion and the Hearing was sufficient under the circumstances and no other or further notice need be given; and (iv) the Court having determined

<sup>1</sup> Capitalized terms used but not specifically defined herein shall have the respective meanings ascribed to them in the Motion or the Bidding Procedures attached hereto as Exhibit A.

that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein, and the objections, if any, to the relief requested in the Motion having been overruled, except as may be provided below.

IT IS HEREBY ORDERED that:

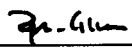
1. The Motion is GRANTED, subject to the provisions below.
2. The Bidding Procedures, including payment of a Break-Up Fee (as applicable), attached hereto as Exhibit A, are approved in their entirety, subject to the rights of the Committee to raise the Committee Objection by the Committee Objection Deadline (each as defined below). Notwithstanding anything to the contrary contained in this Order, the official committee of unsecured creditors (the "Committee") reserves the right to object (the "Committee Objection") to the sale of the Non-Performing Assets as not being in the best interest of investors, creditors and the estate through and including August 9, 2010 (the "Committee Objection Deadline"), with any hearing on the Committee Objection being held on August 12, 2010 at 4:00 p.m. (prevailing Eastern time) in the courtroom of the Honorable Paul M. Glenn, Chief United States Bankruptcy Judge, in the United Courthouse, Room 4A, located at 300 North Hogan Street, Jacksonville, Florida 32202 ("Courtroom 4A").
3. The Auction shall be held on August 19, 2010 at 1:30 p.m. (prevailing Eastern time) in Courtroom 4A and conducted in accordance with the terms and provisions of the Bidding Procedures.
4. The Sale Hearing shall be held in Courtroom 4A on August 19, 2010 at 1:30 p.m. (prevailing Eastern time) immediately following the conclusion of the Auction, at which time the Court will consider the Chapter 11 Trustee's request to sell the Non-Performing Assets to the Purchaser or the Winning Bidder at the Auction, free and clear of all liens, claims, encumbrances, and interests.

5. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing.

6. Objections, if any, to the relief sought at the Sale Hearing must (a) be in writing, (b) conform to the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules for the Middle District of Florida, Jacksonville Division, (c) set forth the name of the objector, the nature of the objector's claims against or interests in the Debtor's estate or property, and the legal and factual basis for the objection, and (d) shall be filed with the Court and served on (i) counsel to the Chapter 11 Trustee at Akerman Senterfitt, 50 North Laura Street, Suite 2500, Jacksonville, Florida 32202, Attn: Jacob A. Brown, Esq. and Steven R. Wirth, Esq., (ii) proposed counsel to the Committee, Mateer & Harbert, P.A., 225 E. Robinson Street, Suite 600, Orlando, Florida 32801, Attn: Jon E. Kane, Esq., and (iii) the Office of the United States Trustee for the Middle District of Florida, Attn: Elena L. Escamilla, Esq., 135 W Central Blvd, Suite 620, Orlando, FL 32806, so as to be received no later than 5:00 p.m. eastern time on August 9, 2010.

7. The Chapter 11 Trustee shall serve the Notice of Auction in the form annexed to the Motion as Exhibit E and a copy of this Order, in accordance with the procedures and on the parties set forth in the Motion on or before JULY 29, 2010.

DATED this 27 day of July, 2010, at Jacksonville, Florida

  
\_\_\_\_\_  
Paul M. Glenn  
Chief United States Bankruptcy Judge

# **EXHIBIT A**

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

In re:

LYDIA CLADEK, INC.,

Case No. 3:10-bk-02805-PMG

Debtor.

(Consolidated by Prior Court Order with Case  
No. 10-bk-02800-PMG)

**BIDDING PROCEDURES**

These Bidding Procedures set forth the process by which Michael Phelan, the chapter 11 trustee (the "Chapter 11 Trustee") of the consolidated chapter 11 cases of Lydia Cladek, Inc. (the "Debtor"), is authorized to conduct a sale by auction (the "Auction") of substantially all of the Debtor's non-performing assets as more fully described in the Asset Purchase Agreement by and between the Chapter 11 Trustee and DEALERINDUSTRY.COM, LLC (the "Purchaser") dated July 2, 2010 (the "Asset Purchase Agreement"), attached hereto as Exhibit A. These Bidding Procedures were approved by order dated July 27, 2010 (the "Sale Procedures Order") of the United States Bankruptcy Court for the Middle District of Florida, Jacksonville Division (the "Court") in the above-captioned case.

Assets to be Sold: Subject to the terms and conditions set forth in the Asset Purchase Agreement, at the Closing, the Seller shall sell, assign, transfer, convey and deliver (or cause to be sold, assigned, transferred, conveyed and delivered) to the Purchaser, and the Purchaser shall purchase, assume and accept from the Seller, all right, title and interest in and to all of the following assets (defined in the Asset Purchase Agreement as the "Transferred Assets"), in accordance with, and with all of the protections afforded by, section 363 of the Bankruptcy Code:

- i. all of the (i) retail installment sales contracts evidencing obligations to pay indebtedness and evidencing a related security interest in certain motor vehicles and (ii) promissory notes and security agreements evidencing obligations to pay indebtedness and a related security interest in certain motor vehicles, all as set forth on Schedule A attached to the Asset Purchase Agreement (collectively, the "Loans"), as such Schedule A may be updated pursuant to the terms therein;
- ii. all payments received by Seller, and all rights to receive payment, with respect to the Loans following the date of the entry of the Sale Approval Order (the "Cut-Off Date");

- iii. all of the rights under any lender's single interest insurance policies relating to the motor vehicles securing any of the Loans for the benefit of the creditors of any such Loans (to the extent such rights exist and may be assigned and conveyed); and
- iv. all payment and collection records relating to the Loans, all original agreements relating to the Loans, all files and records relating to the credit files of the other Third Parties to the Loans, including, without limitation, the original credit application, credit investigation files and insurance information (collectively, the "Books and Records").

Excluded Assets: Notwithstanding anything to the contrary in the Asset Purchase Agreement, no other assets of the Debtor other than the Non-Performing Assets are being sold or assigned to the Purchaser thereunder.

Assumed Liabilities: At the Closing, the Purchaser shall assume and in due course pay, discharge, perform or otherwise fully satisfy the all Liabilities of Debtor arising out of, relating to or otherwise in respect of, the Loans, which Liabilities accrue on or after the Closing Date (the "Assumed Liabilities").

1. Submission of Bids.

- a. Bid Deadline. Any party desiring to qualify for participation in the Auction (a "Bidder") must deliver three (3) copies of its offer (a "Bid") in writing to counsel for the Chapter 11 Trustee, Akerman Senterfitt, Attn: Jacob A. Brown, Esq. and Steven R. Wirth, Esq., 50 North Laura Street, Suite 2500, Jacksonville, FL 32202, and one (1) copy to proposed counsel to the Creditors' Committee, Mateer & Harbert, P.A., 225 E. Robinson Street, Suite 600, Orlando, Florida 32801, Attn: Jon E. Kane, Esq., such that the Bid is actually received no later than 5:00 p.m., on the fifth business day before the date of the Auction (the "Bid Deadline"). Bids received after the Bid Deadline may be rejected by the Chapter 11 Trustee; *provided, however*, that the Chapter 11 Trustee reserves the right, in his sole and absolute discretion, to deem a Bid received after the Bid Deadline a Qualified Bid (as defined below).
- b. Qualified Bid. Unless the Chapter 11 Trustee determines otherwise, only those Bids that meet with the following qualifications will be considered "Qualified Bids" by the Chapter 11 Trustee:
  - i. the Bid must be accompanied by (a) a deposit in the form of a certified or cashier's check consisting of an amount equal to the Break-Up Fee plus the Minimum Overbid, (b) a duly executed asset acquisition agreement that is substantially similar to the Asset Purchase Agreement or containing more favorable terms and conditions to the Chapter 11 Trustee than are contained in the

Asset Purchase Agreement, including, but not limited to, a closing date no later than October 8, 2010 (the last date set for closing under the Asset Purchase Agreement), with such agreement accompanied by a black-lined version marked to reflect variations thereto, (c) a purchase price in an amount, in cash, of at least the sum of (i) the initial purchase price as set forth in the Asset Purchase Agreement, plus (ii) the amount of the Break-Up Fee, plus (iii) \$25,000.00 (collectively, the "Minimum Overbid"); without limiting the generality of the foregoing, such Bid shall be for substantially all of the Non-Performing Assets and shall not include any due diligence or financing contingency;

- ii. the Bid must be expressly made subject to the Chapter 11 Trustee's obligations to pay the Break-Up Fee pursuant to the terms of the Asset Purchase Agreement;
- iii. the Bid must (unless otherwise determined by the Chapter 11 Trustee): (a) give sufficient indicia that the Bidder or its representative is legally empowered, by power of attorney or otherwise, to both bid on behalf of the Bidder and also to complete and sign, on behalf of the Bidder, a binding and enforceable asset purchase agreement; and (b) include sufficient information to permit the Chapter 11 Trustee to determine the proposed Bidder's financial wherewithal to close the proposed transaction;
- iv. Following delivery of the Bids, the Chapter 11 Trustee will analyze each Bid to determine which Bids constitute Qualified Bids. The Chapter 11 Trustee may request additional information from a Bidder to discuss or clarify terms and evaluate the Bidder's ability to consummate the transaction and to fulfill its obligations in connection therewith, and such Bidder shall be obligated to provide such information;
- v. After it determines which Bids are Qualified Bids, the Chapter 11 Trustee will distribute to each holder of a Qualified Bid (a "Qualified Bidder") a list of the Qualified Bids and their terms (or copies of thereof ) by 5:00 p.m. eastern time on a date that is two (2) days prior to the Auction. Prior to the Auction, the Chapter 11 Trustee will disclose to Qualified Bidders, the Purchaser, and the Court, the amount and terms of the highest proposed Qualified Bid (the "Highest Pre-Auction Bid").

c. Auction, Bidding, Increments.

- i. The Auction will be held in the courtroom of the Honorable Paul M. Glenn, Chief United States Bankruptcy Judge, in the United Courthouse, Room 4A, located at 300 North Hogan Street,

Jacksonville, Florida 32202, on August 19, 2010 at 1:30 p.m. (prevailing Eastern time) or such later date as is determined by the Court. For a Qualified Bid to be considered, the Qualified Bidder must appear in person at the Auction or through a duly authorized representative, unless alternative arrangements satisfactory to the Chapter 11 Trustee and the Court have been made in advance.

- ii. At the Auction, (a) Qualified Bidders and the Purchaser will have the opportunity to bid on the Assets in \$5,000 increments, starting with \$5,000 above the Highest Pre-Auction Bid, (b) each Qualified Bidder shall have the right to continue to improve its bid in such manner and on such terms as determined by the Chapter 11 Trustee and the Court at the time thereof; (c) bidding will continue until such time as the highest or best bid is determined; and (d) upon conclusion of the Auction, the Chapter 11 Trustee shall determine (after consultation with the Creditors' Committee) the highest or otherwise best bid, and submit such bid for approval by the Court (the "Winning Bid"). The holder of the Winning Bid shall be referred to as the "Winning Bidder".
- iii. With respect to any further bid submitted by the Purchaser, the consideration offered by the Purchaser shall be deemed to include the full amount of the Break-Up Fee potentially payable to the Purchaser. The Purchaser shall have the right to credit-bid the amount of the Break-Up Fee at the Auction.
- iv. Any Bid made at the Auction shall constitute, to the extent it does not already, an irrevocable offer that is binding on the Qualified Bidder from the time it is made through the date on which the Court approves or rejects the offer of a competing Qualified Bidder.
- v. After the conclusion of the Auction, all Bidders are entitled to a return of their deposit, except for the Winning Bidder and the holder of the bid, determined by the Chapter 11 Trustee to be the second highest and best bid (the "Back-Up Bid"). The Chapter 11 Trustee will release the deposit submitted with the Back-Up Bid immediately upon the closing of the Asset Sale. The Chapter 11 Trustee may, in its sole discretion, consider more than one Qualified Bid as the Back-Up Bid. The Asset Purchase Agreement submitted by the Purchaser will be considered a Back-Up Bid in the event the Purchaser is not the Winning Bidder.
- vi. If the Chapter 11 Trustee does not receive any Qualified Bids, the Chapter 11 Trustee will report the same to the Court and will proceed with the Sale Hearing and no Auction shall be held.

d. Break-up Fee.

- i. In the event the Purchaser is not the holder of the Winning Bid because another Qualified Bid is approved by the Court, then the Purchaser shall be entitled to the Break-Up Fee, upon the closing of the Asset Sale to the Winning Bidder.
- ii. The Purchaser is granted a super-priority administrative expense claim for the Break-Up Fee pursuant to section 503 of the Bankruptcy Code which shall be paid from the proceeds of the Asset Sale to the Winning Bidder within two (2) business days of the Asset Sale.

e. Sale Hearing.

- i. The Sale Hearing to approve the Asset Sale to the Purchaser or the holder of such Winning Bid as accepted by the Chapter 11 Trustee as being the highest and best offer at the Auction will be held immediately following the Auction on August 19, 2010 at 1:30 p.m. (prevailing Eastern time), before the Honorable Paul M. Glenn, Chief United States Bankruptcy Judge, in the United Courthouse, Room 4A, located at 300 North Hogan Street, Jacksonville, Florida 32202.

8. Closing.

The closing of the sale of the Non-Performing Assets to the Winning Bidder will occur in accordance with the terms of the applicable asset purchase agreement.

9. Failure to Consummate Purchase.

If for any reason the Winning Bidder fails to consummate the sale of the Non-Performing Assets, or any part thereof, the holder of the second highest or best bid as determined by the Chapter 11 Trustee in his reasonable business judgment (the "Back-Up Bid") will automatically be deemed to have submitted the highest and best bid. If such failure to consummate the purchase is the result of a breach by the Winning Bidder, such breaching party's deposit shall be forfeited to the Chapter 11 Trustee, and the Chapter 11 Trustee specifically reserves the right to seek all available damages from the defaulting Bidder. The Chapter 11 Trustee may, in his sole and absolute discretion, consider more than one Qualified Bid as the Back-Up Bid. The Asset Purchase Agreement submitted by the Purchaser will be considered a Back-Up Bid in the event the Purchaser is not the Winning Bidder.

10. Return of Deposit.

After the Sale Hearing, if a Winning Bid has been approved by the Bankruptcy Court, the deposits of the other Bidders who did not submit a Winning Bid shall be returned, subject to

paragraph 9 hereof; *provided, however*, that the deposit of the holder of the Back-Up Bid shall not be returned until the closing of the sale to Winning Bidder.

11. Reservation of Rights; Deadline Extensions.

The Chapter 11 Trustee reserves the right to: (i) impose, at or prior to the Auction, additional terms and conditions on the sale of the Non-Performing Assets consistent with the Sale Procedures Order; (ii) and extend the deadlines set forth in the Bidding Procedures, adjourn the Auction or impose new procedures at the Auction, and/or adjourn the Sale Hearing in open court without further notice.

Dated: Jacksonville, Florida  
July 27, 2010

AKERMAN SENTERFITT

By: /s/ Steven R. Wirth

Jacob A. Brown

Florida Bar No. 0170038

Steven R. Wirth

Florida Bar Number: 170380

Email: [steven.wirth@akerman.com](mailto:steven.wirth@akerman.com)

50 North Laura Street, Suite 2500

Jacksonville, Florida 32202

Phone: (904) 798-3700

Fax: (904) 798-3730

*Attorneys for Michael Phelan, not individually  
But as the Chapter 11 Trustee for the Debtor*

## **EXHIBIT A**

(Schedule A to the Asset Purchase Agreement is not annexed hereto because it is voluminous in nature, but a copy is available for viewing on the Chapter 11 Trustee's website - [www.cladektrustee.com](http://www.cladektrustee.com).)

**EXECUTION COPY**

**ASSET PURCHASE AGREEMENT**

**dated as of July 21<sup>st</sup> 2010**

**among**

**DEALERINDUSTRY.COM, LLC**

**as Purchaser**

**and**

**MICHAEL PHELAN, AS CHAPTER 11 TRUSTEE**

**OF THE BANKRUPTCY ESTATE OF LYDIA CLADEK, INC.**

**as Seller**

{JAS44058;2}

A handwritten signature or mark, possibly a checkmark or initials, located in the lower right quadrant of the page.

**LIST OF EXHIBITS AND SCHEDULES**

**Exhibits**

<b>Exhibit A</b>	<b>Form of Bill of Sale, Assignment and Assumption</b>
<b>Exhibit B</b>	<b>Form of Bidding Procedures Order</b>
<b>Exhibit C</b>	<b>Form of Sale Approval Order</b>

**Schedules**

<b>Schedule A</b>	<b>Schedule of Loans</b>
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### ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the "Agreement") is dated June \_\_, 2010, between DEALERINDUSTRY.COM, LLC, a Florida limited liability company ("Purchaser"), and MICHAEL PHELAN, AS CHAPTER 11 TRUSTEE OF THE BANKRUPTCY ESTATE OF LYDIA CLADEK, INC. ("Seller").

WHEREAS, on April 2, 2010, an involuntary bankruptcy petition was filed (the "Involuntary Case") against Lydia Cladek, Inc., a Florida corporation (the "Debtor"), under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Middle District of Florida, Jacksonville Division (the "Bankruptcy Court");

WHEREAS, on April 5, 2010, the Debtor filed a voluntary Chapter 11 petition, case styled as In re Lydia Cladek, Inc., Case No. 10-bk-02805-PMG, in the Bankruptcy Court (the "Voluntary Case");

WHEREAS, on April 7, 2010, several creditors filed an Emergency Motion to Consolidate the Involuntary and Voluntary Chapter 11 cases of Lydia Cladek, Inc and an Emergency Motion to Appoint the Seller as a Chapter 11 Trustee;

WHEREAS, on April 12, 2010, the Court entered its (a) Order Granting Motion to Consolidate, consolidating the Voluntary and Involuntary Chapter 11 cases of the Debtor, and providing that the Voluntary Case, Case No. 10-02805, shall be the lead case and (b) Order Granting Motion to Appoint Seller as Chapter 11 Trustee (the "Appointment Order");

WHEREAS, Seller is currently operating the Debtor's business pursuant to Sections 1106 and 1108 of Chapter 11 of Title 11 of the Bankruptcy Code and the Appointment Order;

WHEREAS, the Purchaser desires to purchase certain Transferred Assets (as hereinafter defined) and to assume certain Liabilities (as hereinafter defined) with respect to the Transferred Assets, and the Seller desires to sell the Transferred Assets to the Purchaser and to assign such Liabilities to the Purchaser, all on the terms and conditions set forth in this Agreement and in accordance with Sections 105, 363, 503 and other applicable provisions of the Bankruptcy Code;

WHEREAS, the Transferred Assets will be sold pursuant to an order of the Bankruptcy Court approving such sale under section 363 of the Bankruptcy Code; and

WHEREAS, the Seller desires to sell and assign the Transferred Assets in furtherance of its obligations as the Chapter 11 Trustee under the Appointment Order.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:



ARTICLE I  
DEFINITIONS AND RULES OF CONSTRUCTION

1.1. Definitions. Unless otherwise defined herein, capitalized terms used herein shall have the meanings set forth below:

“Affiliate” means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such specified Person.

“Bill of Sale” means the Bill of Sale, Assignment and Assumption substantially in the form of Exhibit A hereto to be executed by Seller and Purchaser on the Closing Date.

“Business Day” means any day that is not a Saturday, Sunday or other day on which banks located in New York are authorized or obligated to close.

“Claim” means a suit, claim, action, proceeding, inquiry, investigation, litigation, demand, charge, complaint, grievance, arbitration, indictment, information, or grand jury subpoena.

“Governmental Body” means a domestic or foreign national, federal, state, provincial, or local governmental, regulatory or administrative authority, department, agency, commission, court, tribunal, arbitral body or self-regulated entity.

“IRS” means the United States Internal Revenue Service.

“Law” means any federal, state or local statute, law, rule, regulation, order or other requirement of any Governmental Body.

“Liabilities” means any direct or indirect, primary or secondary, liability, indebtedness, obligation, penalty, cost or expense (including costs of investigation, collection and defense), Claim, deficiency, guaranty or endorsement of or by any Person (other than endorsements of notes, bills, checks and drafts presented for collection or deposit in the ordinary course of business) of any type, whether accrued, absolute or contingent, liquidated or unliquidated, choate or inchoate, matured or unmatured, or otherwise. Without limiting the foregoing, the term “Liabilities” includes and refers to all liabilities and obligations for or with respect to Taxes, including liabilities for Taxes of any Person under Treasury Regulation Section 1.1502-6 (or any similar provision of any applicable Law), as a transferee or successor, by contract, or otherwise.

“Person” means any individual, corporation, partnership, limited liability company, limited liability partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Body or other entity.

“Representative” means, with respect to a particular Person, any director, officer, manager, partner, member, employee, agent, consultant, advisor or other



representative of such Person, including legal counsel, accountants, and financial advisors.

"Tax" or "Taxes" means all taxes, charges, fees, imposts, levies or other assessments, including, without limitations, all net income, franchise, profits, gross receipts, capital, sales, use, ad valorem, value added, transfer, transfer gains, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, real or personal property, and estimated taxes, customs duties, fees, assessments and charges of any kind whatsoever, together with any interest and any penalties, fines, additions to tax or additional amounts thereon, imposed by any taxing authority (federal, state, local or foreign) and shall include any transferee liability in respect of Taxes.

"Third Party" means any Person other than the Seller, the Purchaser or any of their respective Affiliates.

1.2. Rules of Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the Parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement. Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

(a) Any reference in this Agreement to "dollars" or "\$" shall mean U.S. dollars.

(b) All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

(c) Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(d) The division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any "Section" are to the corresponding Section of this Agreement unless otherwise specified.

(e) The words such as "herein," "hereinafter," "hereof" and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

(f) Unless the context otherwise clearly indicates, in this Agreement "includes" and "including" are not limiting.



**ARTICLE II**  
**PURCHASE AND SALE: ASSUMPTION OF CERTAIN LIABILITIES**

2.1. Purchase and Sale of Assets. Subject to the terms and conditions set forth in this Agreement, at the Closing, the Seller shall sell, assign, transfer, convey and deliver (or cause to be sold, assigned, transferred, conveyed and delivered) to the Purchaser, and the Purchaser shall purchase, assume and accept from the Seller, all right, title and interest in and to all of the following assets (collectively, the Transferred Assets"), in accordance with, and with all of the protections afforded by, Section 363 of the Bankruptcy Code:

(a) all of the (i) retail installment sales contracts evidencing obligations to pay indebtedness and evidencing a related security interest in certain motor vehicles and (ii) promissory notes and security agreements evidencing obligations to pay indebtedness and a related security interest in certain motor vehicles, all as set forth on Schedule A attached hereto (collectively, the "Loans"), as such Schedule A may be updated pursuant to the terms herein;

(b) all payments received by Seller, and all rights to receive payment, with respect to the Loans following the date of the entry of a final order by the Bankruptcy Court approving of the Sale Approval Order (the "Cut-Off Date"); and

(c) all payment and collection records relating to the Loans, all original agreements relating to the Loans, all files and records relating to the credit files of the other Third Party's to the Loans, including, without limitation, the original credit application, credit investigation files and insurance information (collectively, the "Books and Records").

2.2. Excluded Assets. Notwithstanding anything to the contrary in this Agreement, no other assets of the Seller or the Company other than the Transferred Assets are being sold or assigned to the Purchaser hereunder.

2.3. Assumed Liabilities. At the Closing, the Purchaser shall assume and in due course pay, discharge, perform or otherwise fully satisfy the all Liabilities of Debtor arising out of, relating to or otherwise in respect of, the Loans, which Liabilities accrue on or after the Closing Date (the "Assumed Liabilities").

2.4. Excluded Liabilities. Notwithstanding anything to the contrary contained in this Agreement, the parties expressly acknowledge and agree that the Purchaser shall not assume or be liable or responsible for any Liability of the Debtor, other than the Assumed Liabilities (such Liabilities being collectively referred to herein as the "Excluded Liabilities").

**ARTICLE III**  
**PURCHASE PRICE**

3.1. Purchase Price. Subject to the terms and conditions hereof, in full consideration for the sale and purchase of the Transferred Assets, at the Closing, the Purchaser shall pay to the Seller an amount equal to the following (the "Purchase Price");



(a) the earnest money deposit in the amount of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) (the "Deposit") to be paid by the Purchaser upon the execution of this Agreement, which Deposit shall be held by Seller in escrow until Closing; and

(b) an amount equal to sum of the following calculation less the Deposit shall be paid to Seller at the Closing:

(i) Point Nine Two Percent (0.92%) of the Unpaid Balance for the Loans (collectively, which such amount as of the date hereof is equal to approximately \$578,570.)

For purposes of this Agreement, the "Unpaid Balance" for each Loan is as set forth on Schedule A attached hereto.

ARTICLE IV  
NO REPRESENTATIONS AND WARRANTIES OF SELLER

Purchaser understands, acknowledges and agrees that Seller is not making any representations whatsoever with respect to the Transferred Assets and Seller is selling the Transferred Assets "AS-IS," "WHERE-IS," "WITH ALL FAULTS," and "WITH NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE."

ARTICLE V  
REPRESENTATIONS AND WARRANTIES OF PURCHASER

The Purchaser represents and warrants to Seller on the date hereof and as of the Closing Date as follows:

5.1. Due Organization and Authority. The Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Florida and has all necessary company power and authority to own, lease and operate its properties and to carry on its business as now being conducted. The Purchaser has all requisite power and authority to enter into this Agreement, carry out its obligations hereunder and consummate the transactions contemplated hereby. The execution and delivery by the Purchaser of this Agreement, the performance by the Purchaser of its obligations hereunder and the consummation by the Purchaser of the transactions contemplated hereby have been duly authorized by all requisite action on the part of the Purchaser. This Agreement has been duly executed and delivered by the Purchaser, and, assuming the due authorization, execution and delivery hereof by the Seller, this Agreement constitutes (or will constitute upon due execution and delivery) the legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, except to the extent enforceability may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting creditors rights generally or by general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).



5.2. No Conflicts. The execution and delivery by the Purchaser of this Agreement, the consummation of the transactions contemplated hereby, and the performance by the Purchaser of this Agreement in accordance with its terms will not:

(a) violate the certificate of incorporation or by-laws (or comparable instruments) of the Purchaser; or

(b) violate any Law to which the Purchaser or its assets are bound or subject;

provided, however, that the case set forth in clause (b) above is subject to exceptions that (i) would not reasonably be expected to have, either individually or in the aggregate, a material and adverse effect on the Purchaser or to prevent or materially delay the consummation by the Purchaser of the transactions contemplated by this Agreement or (ii) that arise as a result of any facts or circumstances relating to the Seller or any of its Affiliates.

5.3. Litigation. There are no Claims pending or, to the knowledge of the Purchaser, threatened against the Purchaser before any Governmental Body that would prevent or materially delay the consummation by the Purchaser of the transactions contemplated by this Agreement.

5.4. Financing. At the Closing, the Purchaser will have the funds necessary to consummate the transactions contemplated by this Agreement, including payment of the Purchase Price, and all related fees and expenses. Purchaser has no reason to believe that such available cash will not be available. Brokers. The Purchaser has not paid or agreed to pay, or received any Claim with respect to, any brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated hereby.

5.6. "As Is" Transaction. PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT NEITHER SELLER NOR ANY OF ITS AFFILIATES MAKE ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER RELATING TO THE BUSINESS OF THE DEBTOR OR THE TRANSFERRED ASSETS (INCLUDING THE VALUE, CONDITION OR USE OF THE TRANSFERRED ASSETS) OR OTHERWISE WITH RESPECT TO ANY OTHER INFORMATION PROVIDED TO THE PURCHASER, WHETHER ON BEHALF OF THE SELLER OR ITS AFFILIATES, INCLUDING AS TO (A) MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR USE OR PURPOSE, (B) THE OPERATION OF THE BUSINESS AFTER THE CLOSING IN ANY MANNER OR (C) THE PROBABLE SUCCESS OR PROFITABILITY OF THE OWNERSHIP, USE OR OPERATION OF THE TRANSFERRED ASSETS BY THE PURCHASER AFTER CLOSING. PURCHASER FURTHER ACKNOWLEDGES THAT PURCHASER HAS CONDUCTED AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE PHYSICAL CONDITION OF THE TRANSFERRED ASSETS AND ALL SUCH OTHER MATTERS RELATING TO OR AFFECTING THE TRANSFERRED ASSETS AS PURCHASER DEEMED NECESSARY OR APPROPRIATE AND THAT IN PROCEEDING WITH ITS ACQUISITION OF THE TRANSFERRED ASSETS, PURCHASER IS DOING SO BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS. ACCORDINGLY, PURCHASER



WILL ACCEPT THE PROPERTY AT THE CLOSING "AS IS", "WHERE IS", AND "WITH ALL FAULTS".

ARTICLE VI  
BANKRUPTCY COURT MATTERS

6.1. Bankruptcy Court Matters. On or before the fifth (5th) Business Day after the execution of this Agreement, the Seller shall file (or shall have filed) a motion or motions with the Bankruptcy Court seeking entry of (a) an order of the Bankruptcy Court regarding the transactions contemplated by this Agreement, establishing notice and service requirements to creditors and parties in interest with respect thereto, approving the Break-Up Fee, and approving the bidding procedures (the "Bidding Procedures" and such order, which shall be substantially in the form of Exhibit B attached hereto, with such changes thereto as the Purchaser shall approve, which approval shall not be unreasonably withheld, conditioned or delayed, being referred to herein as the "Bidding Procedures Order"), and (b) an order of the Bankruptcy Court approving the sale of the Transferred Assets pursuant to this Agreement substantially in the form (with such changes thereto as the Purchaser shall approve, which approval shall not be unreasonably withheld, conditioned or delayed) of Exhibit C hereto, (the "Sale Approval Order").

6.2. Bidding Procedures. The Bidding Procedures Order shall, among other matters:

- (a) approve the Break-Up Fee;
- (b) approve the Bidding Procedures;
- (c) schedule a hearing to consider entry of the Sale Approval Order and provide that notice of such hearing be given to all of the Debtor's creditors, interest holders of record, the IRS, all state/local taxing authorities in jurisdictions where the Debtor has or may have any tax liability, and potential other purchasers identified by the Seller and otherwise in accordance with Bankruptcy Rule 2002; and
- (d) approve of the form of this Agreement.

6.3. Sale Approval Order. The Purchaser agrees that it will promptly take such actions as are reasonably requested by the Seller to assist in obtaining the Sale Approval Order, including, furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by the Purchaser under this Agreement and demonstrating that the Purchaser is a "good faith" purchaser under section 363(m) of the Bankruptcy Code. The Purchaser shall not, without the prior written consent of the Seller, file, join in or otherwise support in any manner whatsoever any motion or other pleading relating to the sale of the Transferred Assets hereunder.

6.4. Appeal. In the event the entry of the Bidding Procedures Order or the Sale Approval Order shall be appealed, the Seller and the Purchaser shall use their respective reasonable efforts to defend such appeal.



6.5. Competing Bids. This Agreement is subject to approval by the Bankruptcy Court and the consideration by the Seller of higher or better competing bids (each a "Competing Bid"). From the date hereof (and any prior time) and until the transaction contemplated by this Agreement is consummated, the Seller is permitted to cause his Representatives and Affiliates to initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to the Purchaser and its Affiliates, agents and Representatives) in connection with any sale or other disposition of the Transferred Assets. In addition, the Seller shall have the responsibility and obligation to respond to any inquiries or offers to purchase all or any part of the Transferred Assets and perform any and all other acts related thereto that are required under the Bankruptcy Code or other applicable Law, including, supplying information relating to the Business and the assets of the Seller to prospective purchasers. The parties agree that the Seller shall be entitled to consider and enter into one or more transactions in connection with a Competing Bid consistent with their fiduciary obligations as debtors in possession in the Bankruptcy Case.

**ARTICLE VII**  
**COVENANTS**

7.1. Expenses. Except as otherwise specifically provided herein, the Purchaser and the Seller shall bear their respective expenses incurred in connection with the preparation, execution and performance of this Agreement and the transactions contemplated hereby, including all fees and expenses of their Representatives.

7.2. Public Announcements. No party to this Agreement shall make, or cause to be made, any press release or public announcement in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without prior written approval of the other party, which approval shall not be unreasonably withheld, conditioned or delayed, unless such disclosure is required by applicable Law. The parties shall cooperate, using commercially reasonable efforts, as to the timing and contents of any such announcement, including any such announcement required by applicable Law.

7.3. Access to Information. From the date hereof until the Closing, upon reasonable notice, the Seller shall (i) afford the Representatives of the Purchaser reasonable access, during normal business hours, to the offices, properties, books and records of the Seller relating to the Transferred Assets, and (ii) furnish to the Representatives of the Purchaser such additional financial and operating data and other information regarding the Transferred Assets as the Purchaser may from time to time reasonably request.

7.4. Further Action. Each of the parties hereto shall execute such documents and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated hereby; provided that the Seller shall not be obligated to incur or be liable for any expense, cost or obligation in connection therewith.

7.5. Tax Matters.

(a) Sales, Use and Other Transfer Taxes. The Purchaser shall be responsible for all of the excise, sales, value added, use, registration, stamp, franchise, transfer



and similar Taxes incurred in connection with the transactions contemplated by this Agreement and which are not otherwise exempt pursuant to the applicable sections of the Bankruptcy Code. The parties hereto agree to cooperate in the filing of all necessary documentation and all Tax Returns with respect to all such Taxes.

(b) Bulk Sales Law. The Purchaser hereby waives compliance by the Seller with the requirements and provisions of any "bulk-transfer" Laws of any jurisdiction that may otherwise be applicable with respect to the sale and transfer of any or all of the Transferred Assets to the Purchaser.

7.6. Notification of Certain Matters. Until the Closing, each party hereto shall promptly notify the other party in writing of any fact, change, condition, circumstance or occurrence or nonoccurrence of any event of which it is aware that will or is reasonably expected to result in any of the conditions set forth in Article VIII or IX of this Agreement becoming incapable of being satisfied.

7.7. Update of Schedule A. Within three (3) Business Days following the Cut-Off Date but prior to the Closing Date, Seller shall update Schedule A, as of the Cut-Off Date, for any changes to the terms of the Loans set forth on Schedule A. All such revisions to Schedule A shall be subject to the approval of the Purchaser prior to the Closing Date, which such approval shall not be unreasonably withheld, conditioned or delayed. Upon such approval, Schedule A shall be final, binding and conclusive on the parties as of the Closing.

7.8. Post-Closing Covenants. Seller agrees, for a period of thirty (30) days following the Cut-Off Date, to continue providing administrative services and the staffing (which will consist of not fewer than two (2) full-time equivalent employees) with respect to the servicing of the Loans without additional cost to Purchaser. Additionally, Seller shall cooperate with Purchaser for a period of sixty (60) days following the Cut-Off Date in connection with the transition of the servicing of the Transferred Assets without additional cost to Purchaser. Seller shall at its own cost shall provide the necessary support and services in order to separate the files and documentation with respect to the Transferred Assets and to facilitate the transfer of the servicing to Purchaser or Purchaser's designee.

#### ARTICLE VIII CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

The obligation of the Purchaser to consummate the transactions contemplated by this Agreement is subject to the fulfillment on or prior to the Closing Date of each of the following conditions, any one or more of which (to the extent permitted by applicable Law) may be waived by the Purchaser:

8.1. Covenants. The covenants and agreements contained in this Agreement to be complied with by the Seller at or before the Closing shall have been complied with in all material respects. The Purchaser shall have received a certificate of the Seller (the "Seller's Certificate") to such effect signed by a duly authorized officer thereof.



8.2. No Order. No Governmental Body shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, injunction or other order (whether temporary, preliminary or permanent) which is in effect and has the effect of making the transactions contemplated by this Agreement illegal or otherwise restraining or prohibiting consummation of such transactions and which is not satisfied or resolved or preempted by the Sale Approval Order. All terminations or expirations of waiting periods imposed by any Governmental Body necessary for the transaction contemplated by this Agreement, if any, shall have occurred.

8.3. Bankruptcy Condition. The Sale Approval Order shall have been entered by the Bankruptcy Court. If the Sale Approval Order shall have been appealed from, the Purchaser agrees to consummate the transaction notwithstanding the pendency of such appeal, provided that no stay thereof shall be in effect.

8.4. Closing Documents. The Seller shall have delivered to the Purchaser on the Closing Date the documents required to be delivered pursuant to Section 10.2.

ARTICLE IX  
CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER

The obligation of the Seller to consummate the transactions contemplated by this Agreement is subject to the fulfillment on or prior to the Closing Date of each of the following conditions, any one or more of which (to the extent permitted by applicable Law) may be waived by the Seller:

9.1. Representations and Warranties; Covenants. The representations and warranties of the Purchaser contained in this Agreement shall be true and correct both as of the date of this Agreement and as of the Closing, other than such representations and warranties that are made as of a specified date, which representations and warranties shall be true and correct as of such date, except where the failure to be so true and correct (without giving effect to any limitation or qualification as to "materiality" (including the terms "material" and "material adverse effect") set forth therein) would not, individually or in the aggregate, reasonably be expected to prevent or materially delay the consummation by the Purchaser of the transactions contemplated by this Agreement. The covenants and agreements contained in this Agreement to be complied with by the Purchaser at or before the Closing shall have been complied with in all material respects. The Seller shall have received a certificate of the Purchaser (the "Purchaser's Certificate") to such effect signed by a duly authorized officer thereof.

9.2. No Order. No Governmental Body shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, injunction or other order (whether temporary, preliminary or permanent) which is in effect and has the effect of making the transactions contemplated by this Agreement illegal or otherwise restraining or prohibiting consummation of such transactions and which is not satisfied or resolved or preempted by the Sale Approval Order. All terminations or expirations of waiting periods imposed by any Governmental Body necessary for the transactions contemplated under this Agreement, if any, shall have occurred.



9.3. Bankruptcy Condition. The Sale Approval Order shall have been entered by the Bankruptcy Court. If the Sale Approval Order shall have been appealed from, the Seller agrees to consummate the transaction notwithstanding the pendency of such appeal, provided that no stay thereof shall be in effect.

9.4. Payment. The Purchaser shall have paid the Purchase Price in accordance with Section 3.1 hereof. Closing Documents. The Purchaser shall have delivered to the Seller on the Closing Date the documents and payments required to be delivered by it pursuant to Section 10.2.

ARTICLE X  
CLOSING

10.1. Closing. Subject to the terms and conditions of this Agreement and the Sale Approval Order, the sale and purchase of the Transferred Assets contemplated by this Agreement shall take place at a closing (the "Closing") to be held at the offices of Akerman Senterfitt LLP, 50 North Laura Street, Suite 2500, Jacksonville, Florida 32202 at 10:00 A.M., Eastern Daylight Time, on the fifth (5<sup>th</sup>) Business Day following the satisfaction or waiver of all conditions to the obligations of the parties set forth in Sections 8 and 9 (other than those conditions which by their nature can only be satisfied at the Closing), or at such other place or at such other time or on such other date as the Seller and the Purchaser may mutually agree upon in writing (the day on which the Closing takes place being the "Closing Date").

10.2. Deliveries by the Seller. At the Closing, unless otherwise waived in writing by the Purchaser, the Seller shall deliver or cause to be delivered to the Purchaser:

- (a) a duly executed counterpart of the Bill of Sale substantially in the form of Exhibit A hereto;
- (b) a duly executed Seller's Certificate pursuant to Section 3.1;
- (c) all of the Books and Records relating to the Transferred Assets;
- (d) all Certificates of Title (or the functional equivalent thereof) for all motor vehicles which secure the Loans; and
- (e) a receipt for the payment of the Purchase Price.

10.3. Deliveries by Purchaser. At the Closing, unless otherwise waived in writing by the Seller, the Purchaser shall deliver or cause to be delivered to the Seller:

- (a) an amount equal to the Purchase Price by wire transfer of immediately available funds to account (or accounts) designated by the Seller at least two (2) Business Days prior to the Closing Date;
- (b) a duly executed counterpart of the Bill of Sale substantially in the form of Exhibit A hereto; and



- (c) a duly executed Purchaser's Certificate pursuant to Section 9.1.

ARTICLE XI  
TERMINATION; TERMINATION PAYMENT

11.1. Termination Prior to Closing. Notwithstanding anything herein to the contrary, this Agreement may be terminated, and the transactions contemplated by this Agreement abandoned, at any time prior to the Closing, upon notice by the terminating party to the other party:

- (a) by the mutual written consent of the Seller and the Purchaser;
- (b) by either the Seller or the Purchaser if the Closing shall not have occurred prior to the ninetieth day following the date hereof (the "Termination Date"); provided, however, that the right to terminate this Agreement under this Section 11.1(b) shall not be available to any party whose failure to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur prior to such date;
- (c) (i) by the Seller, if the Purchaser breaches or fails to perform in any respect any of its representations, warranties or covenants contained in this Agreement and such breach or failure to perform (A) would give rise to the failure of a condition set forth in Article IX, (B) has not been cured within ten (10) Business Days following delivery of written notice of such breach or failure to perform, and (C) has not been waived by the Seller; or (ii) by the Purchaser, if the Seller breaches or fails to perform in any respect any of its covenants contained in this Agreement and such breach or failure to perform (X) would give rise to the failure of a condition set forth in Article VIII, (Y) has not been cured within ten (10) Business Days following delivery of written notice of such breach or failure to perform, and (Z) has not been waived by the Purchaser;
- (d) (i) by the Seller, if any of the conditions set forth in Article IX shall have become incapable of fulfillment prior to the Termination Date, or (ii) by the Purchaser, if any of the conditions set forth in Article VIII shall have become incapable of fulfillment prior to the Termination Date; provided, however, that the right to terminate this Agreement pursuant to this Section 11.1(d) shall not be available if the failure of the party so requesting termination to fulfill any obligation under this Agreement shall have been the cause of the failure of such condition to be satisfied on or prior to the Termination Date; or
- (e) by either the Seller or the Purchaser, if the Bankruptcy Court approves a sale, transfer or other disposition by the Seller of all or any substantial part of the Transferred Assets in connection with a Competing Bid.

11.2. Break-up Fee.

- (a) In the event that this Agreement is terminated under Section 11.1(e), and provided that the Purchaser is not in material breach of any provision of this Agreement prior to such termination, the Seller shall pay to the Purchaser, in cash, an amount equal to Three Percent (3%) of the Purchase Price (as determined by calculating the



Purchase Price on the date of the actual termination) (the "Break-Up Fee") not later than five (5) Business Days after the closing of a transaction in connection with a Competing Bid.

(b) In the event that this Agreement is terminated, the Break-Up Fee shall be the Purchaser's sole and exclusive remedy against the Seller, in full satisfaction of all of the Seller's obligations hereunder.

11.3. Deposit. If this Agreement is terminated by the Seller pursuant to Section 11.1(c), the Seller shall retain the full amount of the Deposit as partial liquidated damages for damages incurred by the Seller by reason of any default by the Purchaser referred to in such Section 11.1(c). In such event, in addition to retaining the full amount of the Deposit, the Seller shall be entitled to exercise all other rights existing in its favor against the Purchaser or any other Person. If this Agreement terminates for any other reason, the Seller shall return the Deposit to the Purchaser. Survival After Termination. If this Agreement is terminated pursuant to Section 11.1 and the transactions contemplated hereby are not consummated, this Agreement shall become null and void and have no further force or effect, except that any such termination shall be without prejudice to the rights of any party on account of the non-satisfaction of the conditions set forth in Article VIII and IX resulting from the intentional or willful breach or violation of the representations, warranties, covenants or agreements of another party under this Agreement. Notwithstanding anything in this Agreement to the contrary, the provisions of Sections 11.3, this Section 11.4 and Article XII shall survive any termination of this Agreement.

## ARTICLE XII MISCELLANEOUS

12.1. Amendment. This Agreement may not be amended, modified or supplemented except by a written instrument signed by all of the parties to this Agreement.

12.2. Notices. Any notice, request, instruction or other document to be given hereunder by a party hereto shall be in writing and shall be deemed to have been given, (a) when received if given in person, (b) on the date of transmission if sent by facsimile or other wire transmission (with answer back confirmation of such transmission), (c) upon delivery, if delivered by a nationally known commercial courier service providing next day delivery service (such as Federal Express), or (d) upon delivery, or refusal of delivery, if deposited in the U.S. mail, certified or registered mail, return receipt requested, postage prepaid:

If to the Seller, addressed as follows:  
Michael Moecker & Associates, Inc.  
6861 S.W. 196 Ave -- Suite 201-04  
Fort Lauderdale, FL 33332  
Attn: Michael Phelan  
Email: mphelan@moecker.com



with a copy to:

Akerman Senterfitt LLP  
50 N. Laura St., Ste. 2500  
Jacksonville, FL 32202  
Attn: Jacob A. Brown  
Steven R. Wirth  
Email: jay.brown@akerman.com

If to the Purchaser, addressed as follows:

DealerIndustry.com, LLC  
2295 South Hiawassee Rd., Suite 409  
Orlando, FL 32835  
Attn: Doug Oakes  
Email: acapitalcorpvp@aol.com

or to such other individual or address as a party hereto may designate for itself by notice given as herein provided.

12.3. Waivers. The failure of a party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term, covenant, representation or warranty contained in this Agreement shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in other instances or a waiver of any other condition or breach of any other term, covenant, representation or warranty:

12.4. Counterparts and Execution. This Agreement may be executed in two (2) or more counterparts (delivery of which may be by facsimile or via email as a portable document format (.pdf)), each of which will be deemed an original, and it will not be necessary in making proof of this Agreement or the terms of this Agreement to produce or account for more than one (1) of such counterparts.

12.5. Headings. The headings preceding the text of the Articles and Sections of this Agreement and the Exhibits and Schedules hereto are for convenience only and shall not be deemed part of this Agreement.

12.6. Applicable Law and Jurisdiction.

(a) This Agreement and all Claims with respect hereto shall be governed by and construed in accordance with the federal bankruptcy law, to the extent applicable, and, where state law is implicated, the laws of the State of Florida without regard to any conflict of laws rules thereof that might indicate the application of the laws of any other jurisdiction.



(b) The Purchaser and the Seller irrevocably and unconditionally consent to submit to the jurisdiction of the Bankruptcy Court for any litigation arising out of or relating to this Agreement and the transactions contemplated hereby (and agree not to commence any litigation relating hereto except in the Bankruptcy Court).

(c) Any and all service of process and any other notice in any such Claim shall be effective against any party if given personally or by registered or certified mail, return receipt requested, or by any other means of mail that requires a signed receipt, postage prepaid, mailed to such party as herein provided. Nothing herein contained shall be deemed to affect the right of any party to serve process in any manner permitted by Law or to commence legal proceedings or otherwise proceed against any other party in any other jurisdiction.

12.7. Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

12.8. Binding Nature; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without prior written consent of the other parties (which shall not be unreasonably withheld or delayed); except (a) that the Purchaser may assign any of its rights (but not its obligations) hereunder to any Affiliate or wholly owned subsidiary, (b) the Purchaser may grant a security interest in its rights and interests hereunder to its lenders, (c) the rights and interests hereunder may be assigned to any successor trustee appointed under chapter 11 or chapter 7 of the Bankruptcy Code, (d) this Agreement may be assigned to any entity appointed as successor to the Seller pursuant to a confirmed chapter 11 plan and (e) as otherwise provided in this Agreement.

12.9. No Third Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto and no provision of this Agreement shall be deemed to confer upon third parties any rights, remedies or Claims.

12.10. Termination of Representations, Warranties and Covenants. All representations and warranties made by the Seller and the Purchaser in this Agreement shall terminate on the Closing Date upon the purchase of the Transferred Assets by the Purchaser and the Seller shall have no liability after the Closing Date for any breach of any representation or warranty. All covenants shall lapse at, and be of no further force and effect following, the Closing unless otherwise specified by their terms.

12.11. Entire Understanding. This Agreement, the Exhibits and the Schedules hereto (which shall remain in full force and effect) set forth the entire agreement and understanding of the parties hereto in respect to the transactions contemplated hereby and the Agreement, the Exhibits and the Schedules hereto supersede all prior agreements, arrangements and understandings relating to the subject matter hereof and are not intended to confer upon any other person any rights or remedies hereunder. There have been no representations or



statements, oral or written, that have been relied on by any party hereto, except those expressly set forth in this Agreement, the Exhibits and the Schedules.

12.12. Partial Invalidity. Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable Law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such a construction would be unreasonable.

*(Signature Page Follows)*



**IN WITNESS WHEREOF**, the Parties have caused this Asset Purchase Agreement to be duly executed, as of the date first above written.

**PURCHASER**

**DEALERINDUSTRY.COM, LLC**

By: \_\_\_\_\_

Name: DOUGLAS OAKES  
Title: COO

**SELLER**

**MICHAEL PHELAN, NOT  
INDIVIDUALLY BUT AS CHAPTER 11  
TRUSTEE FOR THE BANKRUPTCY  
ESTATE OF LYDIA CLADEK, INC.**

By: \_\_\_\_\_

Name:  
Title:

**IN WITNESS WHEREOF**, the Parties have caused this Asset Purchase Agreement to be duly executed, as of the date first above written.

**PURCHASER**

**DEALERINDUSTRY.COM, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**SELLER**

**MICHAEL PHELAN, NOT  
INDIVIDUALLY BUT AS CHAPTER 11  
TRUSTEE FOR THE BANKRUPTCY  
ESTATE OF LYDIA CLADEK, INC.**

By: Michael Phelan  
Name: MICHAEL PHELAN  
Title: TRUSTEE

**EXHIBIT A**

**BILL OF SALE**

This **BILL OF SALE, ASSIGNMENT AND ASSUMPTION** dated effective as of \_\_\_\_\_, 2010, is made and entered into between Michael Phelan, as Chapter 11 trustee for the Bankruptcy Estate of Lydia Cladek, Inc. ("Seller"), and DealerIndustry.com, LLC, a Florida limited liability company ("Purchaser"), pursuant to that certain Asset Purchase Agreement, dated as of July \_\_, 2010 (the "Agreement"), by and between Seller and Purchaser. Capitalized terms used herein and not defined have the meanings assigned to them in the Agreement.

**KNOW ALL MEN BY THESE PRESENTS**, that pursuant to the terms and conditions of the Agreement and for the consideration set forth therein, the receipt and sufficiency of which is hereby acknowledged, Seller hereby sells, conveys, transfers, assigns and delivers to Purchaser all of its right, title and interest in and to the Transferred Assets.

**TO HAVE AND TO HOLD** the same unto Purchaser, its successors and assigns forever.

Purchaser hereby assumes and agrees to pay, discharge and perform when lawfully due, all of the Assumed Liabilities. Except for the Assumed Liabilities, the parties expressly agree that Purchaser shall not assume or otherwise become liable for any other obligations or liabilities of Seller or Debtor.

IN WITNESS WHEREOF, Seller and Purchaser have caused this Bill of Sale, Assignment and Assumption to be executed by a duly authorized representative this \_\_\_\_ day of \_\_\_\_\_, 2010.

**SELLER:**

\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**PURCHASER:**

*DealerIndustry.com LLC*  
\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT B**

**BIDDING PROCEDURES ORDER**

**[See Attached]**

**EXHIBIT C**

**SALE APPROVAL ORDER**

**[See Attached]**