VIA EMAIL

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Attorneys for Respondent

New Motor Vehicle Board

Received 4-3-23

FILED

New Motor Vehicle Board

Date: 4-3-23

By: am

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of:

Let's Ride Motorsports Inc.,

1 ,

v.

17 Textron Specialized Vehicles Inc.,

D 1

Respondent.

Protestant.

Case No. PR-2815-23

RESPONDENT TEXTRON SPECIALIZED VEHICLES INC.'S MOTION TO DISMISS PROTEST

Hearing Date: May 18, 2023

Time: 9:00 a.m.

Respondent Textron Specialized Vehicles Inc. ("TSV"), by and through its undersigned counsel, moves to dismiss the above-captioned Protest, filed by Protestant Let's Ride Motorsports, Inc. ("Protestant") on the grounds that the California Motor Vehicle Board (the "Board") lacks jurisdiction to consider it due to the failure of the Protestant to timely file the Protest as required by California Vehicle Code section 3060. In support of this Motion to Dismiss ("Motion"), TSV states as follows:

I. <u>BACKGROUND</u>

By letter dated November 29, 2022, TSV issued written notice to Protestant and the Board (the

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"Notice") of TSV's intent to terminate the E-Z-GO Retail Dealership Agreement between TSV and Protestant (the "Agreement"). (Declaration of Jason Britt ("Britt Decl.") ¶ 2, Ex. A). Pursuant to the Notice, TSV previously notified Protestant that it was in material breach of the Agreement. (*Id.*). TSV also provided Protestant ninety (90) days to cure the numerous violations identified by TSV, but Protestant failed to do so. (Id.) As a direct consequence of Protestant's failure to cure those breaches, TSV issued the Notice which set forth the specific grounds for termination and provided Protestant with sixty (60) days advance notice before the termination became effective. (*Id.*)

Pursuant to the Notice, the termination was to become effective January 30, 2023, sixty (60) days from the date Protestant and the Board received the written notice. (Id.) The Notice was sent by Brendan Sullivan, Corporate Counsel for TSV, and contained the statutorily required language set forth in section 3060(a)(1)(C). (Id.) The Notice was sent to Darren Fulce, President of Protestant and was delivered to Protestant by Federal Express overnight delivery. (Id. ¶ 3, Ex. "B"). The Notice was received by Protestant on November 30, 2022. (Id., Ex. C). The Notice was also sent to the Board by Federal Express two-day delivery. (Id., \P 4, Ex. D). The Notice was received by the Board on December 1, 2022. (*Id.*)

Subsequently, on January 24, 2023, 54 days after Protestant and the Board's receipt of the Notice, Protestant filed its Protest with the Board challenging TSV's termination of Protestant.

II. <u>ARGUMENT</u>

A. The Board Has Authority to Dismiss the Protest.

It is well-settled under California law that the Board has implied authority to dismiss a protest. See, e.g., Duarte & Witting, Inc. v. New Motor Vehicle Board (2002) 104 Cal.App.4th 626 ("the purpose of the Board and the goal of administrative efficiency support a conclusion that the Board has implied authority to dismiss a protest" if appropriate.) In that case, the court recognized:

'Administrative agencies only have the power conferred upon them by statute and an act in excess of these powers is void. [Citations.] However, an agency's powers are not limited to those expressly granted in the legislation; rather, '[i]t is well settled in this state that [administrative] officials may exercise such additional powers as are necessary for the due and efficient administration of powers expressly granted by statute, or as may fairly be implied from the statute granting the powers.'

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Id. at 635 (quoting Rich Vision Centers, Inc. v. Board of Medical Examiners (1983) 144 Cal. App.3d 110, 114. (emphasis in original).

Moreover, California Vehicle Code section 3050 also indicates that the Board should make the ultimate decision with regard to protests under Vehicle Code section 3060. Section 3050 delineates the duties of the Board. It provides, in pertinent part, that the Board shall "[h]ear and decide, . . . a protest presented by a franchisee pursuant to Section 3060." Cal. Veh. Code §3050(c). Accordingly, the Board has authority to grant TSV's motion to dismiss in this matter.

B. The Board Lacks Jurisdiction Over the Protest Because It Was Not Timely Filed As Required Under the California Vehicle Code.

The Board is a quasi-judicial administrative agency of limited jurisdiction. BMW of N. Am., Inc. v. New Motor Vehicle Bd. (1984) 162 Cal. App. 3d 980, 994. It does not have plenary authority to resolve any and all disputes which may arise between a motor vehicle manufacturer and dealer. See Mazda Motor of Am. Inc. v. California New Motor Vehicle Bd. (2003) 110 Cal. App. 4th 1451, 1457 (citing Hardin Oldsmobile v. New Motor Vehicle Bd. (1997) 52 Cal. App. 4th 585, 590-591). Instead, the Board's jurisdiction to preside over disputes is limited to those specifically committed to its jurisdiction by statute. Mazda Motor, 110 Cal. App. 4th at 1457. When a protest is not filed within the statutory time limitations of California Vehicle Code, the Board lacks jurisdiction over the protest.

California Vehicle Code section 3060(a)(1)(A) provides, in pertinent part: "Notwithstanding . . . the terms of any franchise, no franchisor shall terminate or refuse to continue any existing franchise unless . . . The franchisee and the board have received written notice from the franchisor ... Sixty days before the effective date thereof setting forth the specific grounds for termination or refusal to continue." California Vehicle Code section 3060(a)(2) further provides, in pertinent part: "The franchise may file a protest with the board within 30 days after receiving a 60-day notice, satisfying the requirements of this section." Further, California Vehicle Code section 3060(a)(2)

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provides, "When a protest is filed, the board shall advise the franchisor that a *timely protest* has been filed." The final condition of termination of a franchise is satisfied where, "[t]he franchisor has received the written consent of the franchisee, or the appropriate period for filing a protest has elapsed." Cal. Veh. Code §3060(a)(3) (emphasis added); see also Sonoma Subaru, Inc. v. New Motor Vehicle Bd. (1987) 189 Cal. App. 3d 13, 22 (concluding "[w]here no protest of the termination is filed within the allotted time, the Legislature's obvious intent is to let the franchisor treat the termination as final and effective"). As to the notice by the franchisor, California Vehicle Code section 3060(a)(1)(C) sets forth the specific statutory language which must be contained in the notice regarding the dealer's right to file a protest and the time frame within which to do so.

Here, TSV's Notice contained the language mandated by Section 3060(a)(1)(C), and it was in the proper format that made the specific content conspicuous. The conspicuous language included the following:

"NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days after receiving this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived."

(Britt Decl., Ex. A). The Notice was sent to Protestant and the Board on November 29, 2022, which was subsequently delivered to Protestant's dealership address on November 30, 2022 and the Board on December 1, 2022. (Britt Decl. ¶¶ 3-4, Exs. B-E).

The clear language of Section 3060 establishes that a dealer may maintain a protest, and the Board has jurisdiction to hear the protest, *only* if the dealer timely files its protest "[w]ithin 30 days after receiving a 60-day notice, satisfying the requirements of this section." Cal. Veh. Code § 3060(a)(2). In this action, it cannot be reasonably disputed that the Notice was issued by TSV on November 29, 2022, by mail, and was received by Protestant and the Board on November 30, 2022 and December 1, 2022, respectively. (Britt Decl. ¶ 3-4, Exs. B-E). Accordingly, pursuant to section

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3060(a)(2), Protestant was required to file any protest on or before January 3, 2023. However, Protestant did not file its Protest until January 24, 2023, 54 days after Protestant and the Board's receipt of the Notice and well beyond the statutory filing deadline under California Vehicle Code section 3060(a)(2). Therefore, it is clear the Board lacks jurisdiction to consider the Protest.

The Board has repeatedly recognized that a dealer's failure to timely file a protest is grounds for dismissal. For example, in Eghtesad v. DaimlerChrysler, Protest No. PR-1928-04 (Cal. NMVB) Dec. 16, 2004) (attached to TSV's Request for Official Notice as Exhibit "1"), DaimlerChrysler issued a notice of intent to approve the relocation of two dealerships pursuant to California Vehicle Code section 3062. In that case, the ALJ ruled that the protesting dealer failed to timely file its protest within the 20-day statutory period. (*Id.*, Proposed Ruling, p. 27, ¶¶ 99-100). The ALJ also found that the dealer "received" the notice for purposes of section 3062 when it was delivered to the dealer's address and the fact that the dealer did not open the envelope or read the notice until 10 days later did not affect the statutory deadline to file the protest. (Id., p. 26, ¶ 98). Thus, because the protest was not timely, the ALJ determined that a hearing pursuant to § 3066 was not required and granted the motion to dismiss the protest with prejudice; the Board adopted the ALJ's ruling. (*Id.*, p. 31, ¶117; *Id.*, Decision, p. 1).

For a second example, in San Jose Yamaha Powersports v. Yamaha Motor Corp., Protest No. PR-2394-14 (Cal. NMVB Dec. 12, 2014) (attached to TSV's Request for Official Notice as Exhibit "2"), involving a protest of a 60-day notice of termination pursuant to California Vehicle Code section 3060, the ALJ found that because proper notice was given and received and the protesting dealer failed to file a timely protest, the protest should be dismissed "[a]s there is no longer a 'franchise' in existence between the parties, and thus, [the protesting dealer] is no longer a 'franchisee', ... [and] the Board no longer has jurisdiction over the dispute and is without the power to act on the protest." (Id., Recommendation, p. 13, ¶ 53). The ALJ further explained that dismissal

¹ The protest deadline of December 31, 2022, was a Saturday, and the next business day, January 2, 2023 was an observed holiday.

Assuming arguendo that Plaintiff did not receive the Notice until December 15, 2022 as alleged in the Protest (although contradicted by Federal Express tracking), Plaintiff would have had through January 16, 2023 to file its protest with the Board. No filing on behalf of Protestant was attempted until January 20, 2023. (The Protest is dated January 20, 2023 and was subsequently filed January 24, 2023.)

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is appropriate because "[i]t would be a waste of the Board's resources and a waste of the resources of the parties to proceed to a hearing on the merits of the Protest if there is no longer a franchise in existence." (*Id.*, p. 14, ¶ 54). The findings of the ALJ were adopted and Board dismissed the protest with prejudice. (*Id.*, Order of Dismissal, p. 2).

For a third example, in Paul Blanco's Good Car Company Sacramento v. Kia Motors America, Inc., Protest No. PR-2617-19 (Cal. NMVB Aug. 15, 2019) (attached to TSV's Request for official Notice as Exhibit "3"), also involving a protest of a 60-day notice of termination pursuant to California Vehicle Code section 3060, the ALJ found that because the protest was untimely filed, the Board has no jurisdiction over the matter and the protest must be dismissed with prejudice; the Board adopted ALJ's order. (*Id.*, Proposed Order, p. 19, ¶ 47; *Id.*, Decision, p. 1).

In this case, TSV sent a 60-day notice of termination as prescribed by California Vehicle Code section 3060, the Notice was received by Protestant and the Board on December 1, 2022, Protestant failed to file its protest by January 3, 2023, thirty (30) days from receipt of the Notice. Because TSV met all the conditions of termination of a franchise (i.e., written notice satisfying the requirements of Cal. Vehicle Code section 3060, no timely protest by dealer, and the time frame for a dealer to protest had lapsed), TSV's Notice, effectively terminated Protestant's E-Z-GO franchise as of January 30, 2023. Thus, the Board lacks jurisdiction over this matter and the Protest must be dismissed.

III. CONCLUSION

For the reasons outlined above, the Board lacks jurisdiction to consider the Protest and TSV respectfully requests that the Board dismiss the Protest with prejudice.

DATED: April 3, 2023 Respectfully submitted

> /s/ Paul T. Collins By: Amy M. Toboco (SBN 149508) Paul T. Collins (Admitted *Pro Hac Vice*) Patrick D. Quinn (Admitted *Pro Hac Vice*)

> > Attorneys for Respondent

PROOF OF SERVICE (CCP § 1013(a) and 2015.5)

(CCP § 1013(a) and 2015.5)
The undersigned attorney certifies that on the 3^{rd} day of April, 2023, the foregoing document entitled RESPONDENT TEXTRON SPECIALIZED VEHICLES INC.'S MOTION TO DISMISS PROTEST was served on all the appearing and/or interested parties in this action by placing \Box the original \boxtimes a true copy thereof as follows:
[by ELECTRONIC SERVICE] - By transmitting such document(s) electronically from my e-mail address, paul.collins@nelsonmullins.com, to the person(s) at the electronic mail addresses listed in the attached Service List.
Executed April 3, 2023 at Columbia, South Carolina.
/s/ Paul T. Collins

SERVICE LIST

NEW MOTOR VEHICLE BOARD

1507 – 21stStreet, Suite 330 Sacramento, CA 95811 Telephone: (916) 445-1888

Email: nmvb@nmvb.ca.gov robin.parker@nmvb.ca.gov

danielle.phomsopha@nmvb.ca.gov

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mayville@hughesdealerlaw.com

VIA EMAIL

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Attorneys for Respondent

New Motor Vehicle Board

Received 4-3-23

FILED

New Motor Vehicle Board

Date: 4-3-23

By: am

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of:

Let's Ride Motorsports Inc.,

Protestant.

v.

Textron Specialized Vehicles Inc.,

Respondent.

Case No. PR-2815-23

DECLARATION JASON BRITT IN SUPPORT OF RESPONDENT TEXTRON SPECIALIZED VEHICLES INC.'S MOTION TO DISMISS PROTEST

Hearing Date: May 18, 2023

Time: 9:00 a.m.

I. Jason Britt, declare as follows:

1. I am Assistant General Counsel for Respondent Textron Specialized Vehicles Inc. ("TSV"). I am competent to attest to the matter set forth in this declaration and the attachments thereto.

The following statements are made according to a complete review of TSV's records kept in the

regular and ordinary course of business. If called to testify I could and would accurately testify to the

26 | following under oath.

2. Per letter dated November 29, 2022, Brendan Sullivan, on behalf of TSV, sent a written

notice to Protestant Let's Ride Motorsports Inc. and the California Motor Vehicle Board of TSV's

intent to terminate the E-Z-GO Retail Dealership Agreement between TSV and Protestant. The Notice was addressed to Darren Fulce, President of Protestant. A true and correct copy of the notice dated November 29, 2022 is attached hereto as Exhibit "A."

- 3. The Notice was sent to Protestant's dealership address by Federal Express overnight mail. The Notice was duly delivered on November 30, 2022. A copy of Federal Express tracking and receipt of delivery are attached hereto as Exhibit "B" and "C," respectively.
- 4. As reflected in the Notice, a copy was also sent to the Board by Federal Express two-day delivery. The Notice was duly delivered on December 1, 2022. A copy of Federal Express tracking and receipt of delivery are attached hereto as Exhibit "D" and "E," respectively.

I declare under penalty of perjury under the law of the State of California that the foregoing is true and correct.

Executed on this 3rd day of April, 2023 at Augusta, Georgia.

Jason Britt

PROOF OF SERVICE (CCP § 1013(a) and 2015.5)

The undersigned attorney certifies that on the 3 rd day of April, 2023, the foregoing document entitled DECLARATION OF JASON BRITT IN SUPPORT OF TEXTRON SPECIALIZED
VEHICLES INC.'S MOTION TO DISMISS PROTEST was served on all the appearing and/or
interested parties in this action by placing \square the original \boxtimes a true copy thereof as follows:
[by ELECTRONIC SERVICE] - By transmitting such document(s) electronically from my e-mail address, paul.collins@nelsonmullins.com, to the person(s) at the electronic mail addresses listed in the attached Service List.
Executed April 3, 2023 at Columbia, South Carolina.
/s/ Paul T. Collins

SERVICE LIST

NEW MOTOR VEHICLE BOARD

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mayville@hughesdealerlaw.com

EXHIBIT A



Via Federal Express

Mr. Darren Fulce Let's Ride Motorsports, Inc 5959 Rosedale Hwy Bakersfield, CA 93308

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days after receiving this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived.

NOTICE OF DEALER TERMINATION PURSUANT TO CAL. VEH. CODE § 3060(a)(1)

Mr. Fulce:

By notice dated July 29, 2022, Textron Specialized Vehicles Inc. ("TSV") notified your dealership, Let's Ride Motorsports, Inc ("Dealer"), that it was in material breach of the E-Z-GO Retail Dealership Agreement between TSV and Dealer, effective January 1, 2021 (the "Agreement"). TSV informed Dealer of numerous violations of the Agreement and gave Dealer ninety (90) days to cure those breaches. Dealer took no corrective action and continues to fail to comply with its obligations as an E-Z-GO dealer. As such, TSV hereby provides sixty (60) days' advance written notice to Dealer that TSV intends to terminate the Agreement pursuant to Section 24(c) thereof, for good cause.

As good cause for the termination, TSV cites Dealer's failure to comply with the following material terms of the Agreement:

- a. Lack of any retail sales of E-Z-GO vehicles or efforts to promote the same, and failure to maintain an inventory of current E-Z-GO products or display the same to the public, in violation of the sales responsibilities outlined in Sections 3(a) and 3(g) of the Agreement. Dealer has not purchased any representative vehicle inventory of E-Z-GO products in nearly two years and has not sold a new vehicle to a consumer since June 2021.
- b. Failure to maintain stock inventory of or prominently display a minimum model representation of current-year vehicles Dealer is authorized to sell, as outlined in Sections 4(a), 4(b), and 4(d) of the Agreement. In fact, Dealer has no E-Z-GO inventory whatsoever and thus no E-Z-GO vehicles displayed in its showroom.
- c. Poor product sales performance, as measured under Section 5(a) of the Agreement. Dealer's retail sales numbers have steadily declined since 2019, down to zero in 2022.
- d. Failure to properly submit orders, as required by Section 8(a) of the Agreement. Dealer has submitted two minimal orders over the past two years, with both order forms missing necessary information. When prompted to correct those orders, Dealer chose not to do so, and rather continues to hold no inventory.
- e. Failure to maintain satisfactory dealership facilities or adequate display space to enable Dealer to meet its obligations under the Agreement, as set forth in Section 14(a) thereof. Dealer's showroom does not contain adequate space to display the various E-Z-GO models Dealer is authorized to sell. Dealer committed to expanding the showroom to enable such representation, but then made no such changes. To date, Dealer still dedicates its limited space to only competitive-brand vehicles.













November 29, 2022 Page 2 of 2

f. Absence of any E-Z-GO signage to identify Dealer's affiliation with the franchise, as required by Section 18 of the Dealer Agreement, such that the public is unaware Dealer is authorized to sell E-Z-GO products. Dealer's road sign displays only a competitive brand.

In addition to these extensive failures by Dealer to comply with material terms of the E-Z-GO franchise, further good cause for termination of the Agreement exists from: the lack of E-Z-GO business transacted by Dealer; the lack of investment by Dealer in performing its part of the E-Z-GO franchise; and Dealer's inadequate sales facilities, equipment, and rendering of E-Z-GO services to the public. As a result, it would not be injurious to the public welfare if Dealer's E-Z-GO franchise were disrupted.

Under CAL. VEH. CODE § 3060(a)(1), TSV is required to provide Dealer advance written notice of termination, with a termination date not in advance of at least sixty (60) days following receipt of the notice (the "Notice Period"). This letter, therefore, shall serve as notice to Dealer of TSV's intent to terminate the Agreement in good faith, and for good cause, on January 30, 2023.

If you have any questions, concerns, or issues related to this notice, or if you intend to waive the Notice Period or otherwise voluntarily terminate the Agreement, please reach out to your Regional Sales Manager.

Best Regards,

Brendan Sullivan Corporate Counsel

CC: California Department of Motor Vehicles, New Motor Vehicle Board

Damon Kull, Director, Consumer Sales

Abigail Muldoon, Channel Development Manager

Logan Fondren, Regional Sales Manager

EXHIBIT B



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Signed for by: S.FULCE

DELIVERY STATUS

Delivered

TRACKING ID

770623050166 🖉 🏠

FROM

AUGUSTA, GA US

PACKAGE RECEIVED BY FEDEX

IN TRANSIT

OUT FOR DELIVERY

DELIVERED

BAKERSFIELD, CA US

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Shipment facts



Shipment overview

TRACKING NUMBER 770623050166

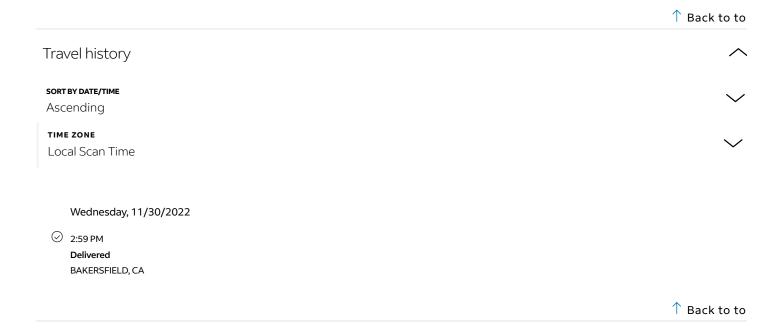
SHIP DATE ? 11/29/22

ACTUAL DELIVERY 11/30/22 at 2:59 pm

SPECIAL HANDLING SECTION Deliver Weekday, Adult Signature Required

SIGNATURE SERVICES ? Adult Signature Required

🛕 Package details



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New Motor Vehick Board P.O. Box 188680 Sacramento, CA 95818-8680

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New Motor Vehicle Board VIA EMAIL Received 5-1-23 1 LAW OFFICES OF GAVIN M. HUGHES GAVIN M. HUGHES State Bar #242119 2 **FILED** ROBERT A. MAYVILLE, JR. State Bar #311069 4360 Arden Way, Suite 1 3 **New Motor Vehicle Board** Sacramento, CA 95864 Date: 5-1-23 Telephone: (916) 900-8022 4 E-mail: gavin@hughesdealerlaw.com By: am mayville@hughesdealerlaw.com 5 6 ATTORNEYS FOR PROTESTANT 7 8 STATE OF CALIFORNIA 9 **NEW MOTOR VEHICLE BOARD** 10 In the Matter of the Protest of: 11 12 Let's Ride Motorsports Inc, **Protest No. PR-2815-23** 13 PROTESTANT LET'S RIDE Protestant, MOTORSPORTS INC'S OPPOSITION 14 TO RESPONDENT TEXTRON v. SPECIALIZED VEHICLES INC.'S 15 MOTION TO DISMISS PROTEST Textron Specialized Vehicles Inc. ("TSV"), 16 Respondent. 17 18 19 20 21 22 23 24 25 26 27 28

Pursuant to the California New Motor Vehicle Board's ("Board") Order Establishing Briefing Schedule Re: Respondent's Motion to Dismiss Protest, Protestant, Let's Ride Motorsports Inc ("Let's Ride"), provides this Opposition to Respondent Textron Specialized Vehicles Inc.'s ("TSV") Motion to Dismiss Protest ("Motion"). Let's Ride respectfully requests the Board deny TSV's Motion.

INTRODUCTION

TSV's Motion wholly ignores the effect of TSV's July 29, 2022, Notice of Breach of Dealer Agreement ("Notice of Cure Period") and the opportunity TSV provided Let's Ride to cure the alleged deficiencies identified in the Notice of Cure Period. Let's Ride reasonably believed the Notice of Cure Period and related Cure Period constituted a franchisor "appeal procedure" as described in Vehicle Code section 3060.¹

After TSV issued the Notice of Cure Period, Let's Ride took reasonable steps to correct the alleged deficiencies identified in the letter. For example, the Notice of Cure Period identified the need to make improvements to Let's Ride's showroom layout, appearance, signage, and dedicated E-Z-GO floor space. Despite sharing showroom space between Yamaha and E-Z-GO since January 2018, without any complaints from TSV, Let's Ride acted to correct these alleged deficiencies by relocating its Yamaha product and its official address for Yamaha to its facility in Shafter, California. Moreover, Let's Ride has displayed prominent E-Z-GO signs on its facility sides since 2017; Let's Ride has also displayed an E-Z-GO sign in the front of its facility since October 2019.

Let's Ride repeatedly attempted to order E-Z-GO products to display and sell from its showroom, including in October 2022 and throughout 2022. However, TSV refused to provide E-Z-GO products until Let's Ride made the changes to its facility identified in the Notice of Cure Period.

Despite Let's Ride's good faith efforts to correct the alleged deficiencies identified in the Notice of Cure Period, TSV *never* returned to evaluate the changes Let's Ride made to cure the alleged areas of concern identified in the Notice of Cure Period. When Let's Ride received the Notice of Dealer Termination dated November 29, 2022 ("NOT"), it was not represented by counsel and reasonably believed TSV could not proceed with termination without ever checking whether Let's Ride made the

¹ References to statutory code sections herein are to the California Vehicle Code unless otherwise stated.

changes identified in the Notice of Cure Period. As a result, Let's Ride understood TSV's appeal process identified in the Notice of Cure Period had not yet ended, and it would have 30 calendar days following the end of the appeal procedure to file a Section 3060(a) Termination Protest.

When it became apparent TSV might not return to verify Let's Ride's cure efforts and close the appeal process, Let's Ride filed its January 20, 2022, Vehicle Code section 3060 Termination Protest ("Protest"). Let's Ride's Protest is timely because TSV's appeals process identified in the Notice of Cure Period never ended. As a result, 30 days after the appeal process has not lapsed.

BACKGROUND

Let's Ride has operated an E-Z-GO franchise since 2016. (Declaration of Darren Fulce in Support of Protestant Let's Ride Motorsports Inc's Opposition to Respondent Textron Specialized Vehicles Inc.'s Motion to Dismiss Protest ("Fulce Decl.") at ¶ 3.) On or about June 18, 2021, Let's Ride sought to order E-Z-GO vehicles from TSV to display and sell to E-Z-GO customers. (Fulce Decl. at ¶ 4 and Exhibit 1.) Despite emailing the order to Gil Salazar, Let's Ride's Dealer Sales Manager ("DSM"), on June 18, 2021, Mr. Salazar indicated Let's Ride should not expect any product until February or March of 2022 due to effects of the COVID-19 Pandemic. (Fulce Decl. at ¶¶ 4-5.)

In February of 2022 and thereafter, Let's Ride repeatedly attempted to order E-Z-GO product from TSV. For example, when Mr. Salazar and Logan Fondren attended a meeting at the Let's Ride's facility on February 16, 2022, Let's Ride's President, Darren Fulce, attempted to provided Mr. Salazar and Mr. Fondren an order for new E-Z-GO vehicles, however, Mr. Salazar and Mr. Fondren refused to accept the order. (Fulce Decl. at ¶ 6 and Exhibit 2.)

On April 29, 2022, after unannounced visits by Mr. Fondren to Let's Ride's facility, Mr. Fulce proposed Mr. Fondren arrange an appointed time to visit the dealership so Mr. Fulce could ensure he would be present for the meeting. (Fulce Decl. at ¶ 7.) Mr. Fulce proposed creating an order for new E-Z-GO vehicles during that meeting. (Fulce Decl. at ¶ 7 and Exhibit 3.) Mr. Fondren refused and instead proposed Let's Ride fill out a mutual termination and release agreement. (Fulce Decl. at ¶ 8 and Exhibit 3.)

On May 10, 2022, Mr. Fondren and Steve Monteith met with Mr. Fulce. (Fulce Decl. at ¶ 9 and Exhibit 2.) The TSV representatives did not discuss Let's Ride's desire to order E-Z-GO products but

instead discussed the possible termination of the franchise agreement between the parties. (Id.)

When Mr. Fulce reached out to Mr. Fondren in October of 2022, Mr. Fondren made clear TSV would not fill orders for Let's Ride unless and until there were changes made to Let's Ride's facility. (Fulce Decl. at ¶¶ 10-11 and Exhibit 4.) Mr. Fondren stated, "the strategy was to make the necessary improvements to the shop before we discussed placing an order." (Fulce Decl. at ¶ 11 and Exhibit 4.) Mr. Fondren failed to provide any response to Mr. Fulce's request for when Let's Ride received an order form which would allow Let's Ride to order E-Z-GO product. (*Id.*)

The foregoing shows Let's Ride acted diligently in seeking to order E-Z-GO product from TSV throughout 2022. TSV unlawfully refused to provide Let's Ride E-Z-GO vehicles despite the existence of a valid franchise agreement and in violation of Vehicle Code section 11713.3, subdivision (a).

On July 29, 2022, TSV provided Let's Ride the Notice of Cure Period. (Fulce Decl. at ¶ 12 and Exhibit 5.) The Notice of Cure Period described alleged breaches of Section 3(a), 3(g), 4(a), 4(b), 4(d), 5(a), 8(a), 10(a), 14(a), and 18 of the Dealer Agreement between TSV and Let's Ride. (*Id.* at Exhibit 5.) It also alleged Let's Ride had not ordered E-Z-GO products from TSV in the preceding eighteen (18) months. (*Id.*) TSV's representation was misleading because Let's Ride repeatedly attempted to order E-Z-GO product from TSV as shown above—"the strategy" was to prevent Let's Ride from ordering product unless and until Let's Ride made "the necessary improvements to the shop." (*See* Fulce Decl. at ¶ 11 and Exhibit 4.)

Even TSV's Notice of Cure Period admitted Let's Ride had attempted to submit at least two order forms that TSV rejected. (Fulce Decl. at Exhibit 5, fn. 1.) If TSV was legitimately concerned regarding Let's Ride's ordering of products, it should have assisted Let's Ride in curing the alleged deficiencies in the two order forms, however, TSV took no such action.

The Notice of Cure Period further referenced a commitment by Let's Ride to "making improvements to your dealership's showroom layout and appearance, signage, and dedicated E-Z-GO floor space such that your dealership could meet its obligations under the Agreement." (Fulce Decl. at Exhibit 5.) The Notice of Cure Period provided Let's Ride the opportunity to cure the alleged breaches within ninety (90) days of the letter. (*Id.*) TSV threatened termination if Let's Ride did not cure the alleged deficiencies to TSV's satisfaction. (*Id.*)

Thereafter, Let's Ride sought to correct the alleged facility deficiencies identified by TSV. Let's Ride ensured its signage prominently displayed it carried E-Z-GO products. (Fulce Decl. at ¶ 13 and Exhibit 6.) Moreover, Let's Ride removed Yamaha product from its showroom and relocated its official address for Yamaha to its facility in Shafter, California. (Fulce Decl. at ¶ 14 and Exhibit 7.) This ensured Let's Ride entire showroom was dedicated to E-Z-GO products. (*Id.*)

Let's Ride anticipated TSV would return to determine whether Let's Ride had cured the alleged facility deficiencies as described in the Notice of Cure Period. (Fulce Decl. at ¶ 15.) However, no TSV representative ever returned to determine if Let's Ride had cured the alleged deficiencies identified in the Notice of Cure Period. (*Id.*)

On November 29, 2022, TSV issued the NOT. (Fulce Decl. at Exhibit 8.) Let's Ride received the NOT on or around December 15, 2022.² (Protest at ¶ 4.) The language in the NOT identified Let's Ride must file a protest within either (1) 30 calendar days after receiving the notice or (2) within 30 days after the end of any appeal procedure provided by the franchisor. (Fulce Decl. at Exhibit 8.) The NOT further alleged "Dealer took no corrective action" and continued to identify alleged facility and signage deficiencies. (*See id.* at (e) and (f).) The NOT also identified Let's Ride's alleged deficiency in ordering product. (*Id.*)

However, Let's Ride corrected the alleged facility and signage deficiencies (Fulce Decl. at ¶¶ 13-14) and Let's Ride was not being allowed to order E-Z-GO product from TSV until the facility and signage deficiencies were corrected to TSV's satisfaction (*see* Fulce Decl. at ¶¶ 4-11 and Exhibit 4). Based on the Notice of Cure Period, Let's Ride understood TSV would need to return to its facility to determine whether or not it had cured the facility and signage deficiencies before proceeding with termination. (Fulce Decl. at ¶ 16.) As a result, the 30-day period after any appeal procedure described in the NOT had not begun—TSV had never ended the Cure Period appeal process identified in the Notice of Cure Period by returning to Let's Ride's facility to determine if it had cured the alleged deficiencies.

² Even if Let's Ride received the NOT earlier than December 15, 2022, as alleged by TSV in support of the Motion, the application of the deadline to file Let's Ride's Protest "within 30 days after the end of any appeal procedure" still has not expired because the cure process TSV offered as its appeal procedure has not ended and TSV has never returned to Let's Ride to determine if it cured the alleged deficiencies identified by TSV.

(*Id.* at ¶ 15.)

On or about January 20, 2023, TSV still had not returned to Let's Ride's facility to determine if it had cured the alleged deficiencies. (Fulce Decl. at ¶ 17.) Let's Ride's President, Mr. Fulce, prepared and filed its Protest against the proposed termination in the event TSV never returned to determine if Let's Ride had cured the alleged deficiencies identified in the Notice of Cure Period. (*Id.*) Let's Ride was not represented by counsel at the time it received the NOT or when it filed the Protest.

On or about March 9, 2023, Let's Ride filed a Substitution of Attorney replacing its pro per representation with representation from the Law Offices of Gavin M. Hughes. On April 3, 2023, TSV filed its Motion.

DISCUSSION

Let's Ride's Protest is timely because TSV never returned to determine if Let's Ride cured the alleged deficiencies identified in the Notice of Cure Period. (*See, infra, Part I.*) None of the prior non-precedential protest proceedings cited by TSV show the Board lacks jurisdiction over Let's Ride's Protest. Moreover, *Sonoma Subaru, Inc. v. New Motor Vehicle Bd.* (1987) 189 Cal.App.3d 13 ("*Sonoma Subaru*") does not show the Board lacks jurisdiction over Let's Ride's Protest. (*See, infra, Part II.*)

. LET'S RIDE'S PROTEST IS TIMELY.

TSV's Motion argues Let's Ride's Protest was filed 54 days and at least 34 days after receipt of the NOT and, as a result, the Board allegedly lacks jurisdiction to hear Let's Ride's Protest. (*See* Motion at 5:1-4 and 5: fn. 2.) However, TSV ignores it started a cure process it never ended. Because TSV never returned to Let's Ride to determine if Let's Ride had cured the alleged deficiencies identified by TSV, the appeal process TSV began by issuing the Notice of Cure Period did not expire. Because Section 3060(a) provides for the filing of a protest *either* (1) 30 calendar days after receiving the NOT *or* (2) 30 days after the end of any appeal procedure provided by the franchisor, Let's Ride's Protest was timely with regard to the second of the two deadlines.

California Vehicle Code section 3060 subdivision (a)(2) permits a franchisee to file a protest with the Board "within 30 days after the end of *any* appeal procedure provided by the franchisor...." (Cal. Veh. Code, § 3060, subd. (a)(2) (emphasis added).) The Vehicle Code does not define what constitutes an appeal procedure, however, the Vehicle Code includes *any* appeal procedure provided by the

Here, Let's Ride understood the Cure Period provided for in the Notice of Cure Period to be a type of appeal procedure offered by TSV. (Fulce Decl. at ¶ 16.) Let's Ride's understanding was reasonable because the Notice of Cure Period provided a period of time for Let's Ride to cure alleged facility deficiencies. (Fulce Decl. at Exhibit 5.) It also indicated "[i]f the breaches are not remedied to Company's satisfaction, and in Company's sole discretion, at the end of the Cure Period, TSV will initiate termination of the Agreement pursuant to Section 24(c) and in accordance with any applicable state law." (*Id.*)

The Notice of Cure Period conditioned termination on whether the alleged breaches were remedied to TSV's satisfaction. (Fulce Decl. at Exhibit 5.) Because TSV never returned to check to see if Let's Ride cured the alleged deficiencies identified in the Notice of Cure Period (Fulce Decl. at ¶ 15), Let's Ride reasonably believed TSV had not yet determined in its sole discretion whether Let's Ride cured the alleged deficiencies. Let's Ride relied on the Notice of Cure Period when it ensured Let's Ride's facility prominently displayed E-Z-GO signage and relocated its Yamaha operations to Shater, California. (Fulce Decl. at ¶¶ 13-14.)

Let's Ride also attempted to order E-Z-GO product from TSV, however TSV failed to allow Let's Ride to order product. (*See* Fulce Decl. at ¶¶ 4-11.) Mr. Fondren admitted "the strategy" was to have Let's Ride make facility improvements before he would discuss placing an order for Let's Ride. (Fulce Decl. at Exhibit 4.) Moreover, even TSV's Notice of Cure Period identified at least two order forms Let's Ride attempted to submit but TSV rejected without attempting to have Let's Ride correct any alleged deficiencies. (Fulce Decl. at Exhibit 5, fn. 1.)

TSV's NOT alleged Let's Ride had taken "no corrective action and continues to fail to comply with its obligations as an E-Z-GO dealer." (Fulce Decl. at Exhibit 8.) However, TSV could not know whether Let's Ride had taken any corrective action because TSV had not visited the Let's Ride's facility. (See Fulce Decl. at ¶ 15.) As a point of fact, Let's Ride had taken corrective action during the Cure Period and prior to the NOT—the NOT was factually wrong. (Fulce Decl. at ¶¶ 13-14.) As a result, upon receipt of the NOT, Let's Ride anticipated TSV would return to Let's Ride's facility to determine whether any corrective action had been taken and whether it cured TSV's alleged breaches to TSV's

satisfaction. (Fulce Decl. at ¶ 16.) Let's Ride's reasonably believed its deadline to file its Protest would begin after TSV's return visit to determine whether Let's Ride had cured the alleged facility deficiencies.

TSV's Notice of Cure Period was "any appeal procedure" described by Section 3060(a). TSV's failure to return to Let's Ride's facility to determine whether Let's Ride cured the alleged facility deficiencies means the appeal procedure has not yet ended, and Let's Ride's Protest cannot be more than 30 days after the end of the appeal procedure.

II. THE PROTEST DECISIONS THE MOTION RELIES ON DO NOT SHOW THE BOARD LACKS JURISDICTION OVER THIS PROTEST; LET'S RIDE'S FRANCHISE STILL EXISTS AND CONTINUED TO EXIST AT THE TIME IT FILED ITS PROTEST.

TSV's Motion relies on *Eghtesad v. DaimlerChrysler* (Cal. NMVB, Dec. 16, 2004) Protest No. PR-1928-04 ("*Eghtesad*"), *San Jose Yamaha Powersports v. Yamaha Motor Corp.* (Cal. NMVB, Dec. 12, 2014) Protest No. PR-2394-14 ("*San Jose Yamaha*"), and *Paul Blanco's Good Car Company Sacramento v. Kia Motors America, Inc.* (Cal. NMVB, Aug. 15, 2019) Protest No. PR-2617-19 ("*Paul Blanco*") to argue the Board lacks jurisdiction over Let's Ride's Protest. (Motion at 5:5-6:10.) TSV asks the Board to take official notice of the three protest decisions pursuant to California Evidence Code sections 452(a) and 452(c) and California Government Code section 11515 through TSV's accompanying Request for Official Notice in Support of Respondent Textron Specialized Vehicles Inc.'s Motion to Dismiss Protest ("Request for Official Notice").

As an initial matter, none of the protests cited by TSV in support of its Motion may be relied on by the Board in deciding Let's Ride's Protest. California Government Code section 11425.60 provides, "A decision may not be expressly relied on as precedent unless it is designated as a precedent decision by the agency." (Cal. Gov't Code, § 11425.60, subd. (a).) None of the Board decisions cited by TSV have been designated as precedent.

TSV cannot circumvent the requirements of Government Code section 11425.60 by asking the Board take official notice of the protest decisions because this would improperly invalidate the other requirements of Section 11425.60. A precedent decision is required to be maintained in an index that must be updated annually and shall be made available to the public including through the California Regulatory Notice Register. (Cal. Gov't Code, § 11425.60, subd. (c).) Relying on the protest decisions by way of TSV's Request for Official Notice would violate the necessary legislative requirements before

the Board may rely on a decision as precedent.

Moreover, the factual circumstances of *Eghtesad*, *San Jose Yamaha*, and *Paul Blanco* show they are factually distinct from the circumstances of Let's Ride's Protest. *Eghtesad* concerned a relocation protest where different policy implications are important to the consideration. For example, in a relocation protest, there is an existing dealer who has an interest in the protesting dealer filing a timely protest compared to a termination protest where this policy concern does not exist. (*Compare* Cal. Veh. Code, § 3062 *with* Cal. Veh. Code, § 3060, subd. (a).) Moreover, *Eghtesad* did not involve a cure period or any franchisor appeal process.

In *San Jose Yamaha*, the protesting dealer failed to participate in discovery and failed to submit any opposition to the franchisor's Motion to Dismiss. The protesting dealer's failure to participate in the protest proceeding was an independent ground for the Board dismissing the protest in *San Jose Yamaha*. (*San Jose Yamaha* at p. 14, ¶¶ 55-58.) In contrast, Let's Ride is participating in this Protest (most recently by way of this Opposition) and no discovery has occurred.

Moreover, the second notice of termination in *San Jose Yamaha* was received by the protesting dealer on September 17, 2014. (*San Jose Yamaha* at p. 3, ¶ 11.) As a result, when the proposed decision was issued on December 2, 2014, no protest had been filed for approximately 77 days after the second notice of termination. (*Id.*) As a result, the franchise in *San Jose Yamaha* had been terminated for weeks making the protest moot. In contrast, Let's Ride's protest was filed before TSV's termination became effective. The Board continues to have jurisdiction over Let's Ride's Protest because Let's Ride's franchise still exists pending a final determination by the Board.

In *Paul Blanco*, similar to *San Jose Yamaha*, the protesting dealer filed a protest 90 days after receipt of the notice of termination. (*Paul Blanco at* p. 4, fn. 6.) Because the protest was filed after 60 days from receipt of the notice of termination, the Board also lacked jurisdiction because the franchise had been terminated by operation of law weeks before the protest was filed—at the time of the protest in *Paul Blanco*, no franchise existed. (*See id.*) In contrast, Let's Ride's E-Z-GO franchise continues to exist and the Board continues to have jurisdiction over Let's Ride's Protest.

In addition to the protests expressly relied on by TSV, *Sonoma Subaru* does not show the Board lacks jurisdiction over Let's Ride's Protest. *Sonoma Subaru* concerned a protesting dealer who had

previously filed two timely protests in response to 15-day notices of termination (i.e., within 10 days of receipt of the notice). (*Sonoma Subaru, supra*, 189 Cal.App.3d at pp. 18-20.) The dealer then filed a third protest 15 days after receipt of a 15-day notice of termination. (*Id.*) The court in *Sonoma Subaru* declined to extend a "good cause" exception to the 10-day deadline for 15-day notices of termination. (*Id.* at p. 20.) The *Sonoma Subaru* decision also focused on the policy implications of the legislature providing for a shortened period for termination in special enumerated circumstances. (*Id.* at p. 21.)

However, here Let's Ride's Protest does not concern the 15-day notice of termination provisions of Section 3060 and the policy reasons underlying the *Sonoma Subaru* decision do not apply. Moreover, unlike the *Sonoma Subaru* decision, TSV never returned to see if Let's Ride accomplished the cure provided for in the Notice of Cure Period. In contrast, Subaru learned Sonoma had lost its flooring line of credit and did not obtain a new source of flooring prior to issuing the third notice of termination. (*Sonoma Subaru, supra*, 189 Cal.App.3d at p. 18.)

As the foregoing discussion shows, the Board lacks jurisdiction when a franchisee files a protest after its franchise has already been terminated. Let's Ride filed its Protest before TSV's termination became effective. As a result, the Board still possesses jurisdiction to decide Let's Ride's Protest. Moreover, Let's Ride's Protest is timely based on TSV never returning to end the cure period which constituted an appeal procedure offered by TSV. (*See, supra*, Part I.)

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CONCLUSION

Let's Ride respectfully requests the Board deny TSV's Motion. The Board possesses jurisdiction to decide Let's Ride's Protest and should decide Let's Ride's Protest on its merits. To the extent the Board finds there are factual disputes concerning when TSV's Notice of Cure Period may have ended, Let's Ride requests the Board set the matter for a preliminary hearing to resolve the factual issues underlying TSV's Motion.

Dated: May 1, 2023

LAW OFFICES OF **GAVIN M. HUGHES**

Gavin M. Hughes Robert A. Mayville, Jr.

New Motor Vehicle Board **VIA EMAIL** Received LAW OFFICES OF GAVIN M. HUGHES 1 5-1-23 GAVIN M. HUGHES State Bar #242119 2 **FILED** ROBERT A. MAYVILLE, JR. State Bar #311069 4360 Arden Way, Suite 1 **New Motor Vehicle Board** 3 Sacramento, CA 95864 Date: 5-1-23 Telephone: (916) 900-8022 4 E-mail: gavin@hughesdealerlaw.com By: am 5 mayville@hughesdealerlaw.com 6 ATTORNEYS FOR PROTESTANT 7 8 STATE OF CALIFORNIA 9 **NEW MOTOR VEHICLE BOARD** 10 In the Matter of the Protest of: 11 12 Let's Ride Motorsports Inc, **Protest No. PR-2815-23** 13 **DECLARATION OF DARREN FULCE IN** Protestant, SUPPORT OF PROTESTANT LET'S 14 RIDE MOTORSPORTS INC'S v. OPPOSITION TO RESPONDENT 15 TEXTRON SPECIALIZED VEHICLES Textron Specialized Vehicles Inc. ("TSV"), 16 **INC.'S MOTION TO DISMISS PROTEST** Respondent. 17 18 19 20 21 22 23 24 I, Darren Fulce, declare as follows: 25 1. I am the President of Let's Ride Motorsports, Inc. ("Let's Ride"), the Protestant in the above titled Protest pending before the California New Motor Vehicle Board. Let's Ride is located at 26 27 5959 Rosedale Hwy, Bakersfield, California. I have personal knowledge of the facts set forth in this 28 declaration and could and would testify competently to them under oath if called as a witness.

- 2. I provide this declaration in support of the accompanying and concurrently filed Protestant Let's Ride Motorsports Inc's Opposition to Respondent Textron Specialized Vehicles Inc.'s Motion to Dismiss Protest ("Opposition").
- 3. In or about 2016, Let's Ride entered into an E-Z-GO franchise agreement with Respondent, Textron Specialized Vehicles, Inc. ("TSV"). Let's Ride has operated an E-Z-GO franchise since 2016.
- 4. On or about June 18, 2021, Let's Ride emailed an E-Z-GO My'22 Consumer Order Form to Gil Salazar, our DSM at the time. A true and correct copy of the order form Let's Ride emailed to Mr. Salazar is attached hereto as Exhibit 1.
- 5. After emailing Mr. Salazar the order form, Mr. Salazar responded and informed Let's Ride it should not expect product until February or March of 2022 due to COVID.
- 6. On February 16, 2022, Mr. Salazar and Logan Fondren attended a meeting with me at the Let's Ride facility. During the meeting, I attempted to give Mr. Salazar and Mr. Fondren an order for new E-Z-GO vehicles, however, they would not accept Let's Ride's Order. A true and correct copy of an email chain that refreshed my recollection concerning the timing of the meeting is attached hereto as Exhibit 2. The notes written to the right side of the "I stopped by on 2/16" phrase are my notes in response to Mr. Fondren's email.
- 7. Attached hereto as Exhibit 3 is a true and correct copy of an email chain between Mr. Fondren and myself dated most recently May 2, 2022. In the email chain, I propose Mr. Fondren make an appointment for his visits so I can make sure to be available at the Let's Ride facility for his visits. I also proposed creating a Let's Ride order for new E-Z-GO vehicles during the meeting.
- 8. In response to my April 29, 2022, email, Mr. Fondren refused to provide a date to meet with me and my team. Mr. Fondren proposed we instead fill out and return a mutual termination and release agreement. I did not intend to terminate Let's Ride's E-Z-GO franchise and continue to plan to carry E-Z-GO product. I reaffirmed our commitment to carry E-Z-GO product in my April 29, 2022, email.
- 9. As shown in Exhibit 2, Mr. Fondren sought to set up a meeting for Tuesday, May 10, 2022, for Mr. Fondren, Steve Monteith, and I. I attended the meeting with Mr. Fondren and who I

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believe to be Mr. Monteith. Mr. Fondren and Mr. Monteith did not discuss Let's Ride's desire to order E-Z-GO products but instead discussed the voluntary termination of the Let's Ride E-Z-GO franchise agreement.

- 10. Attached hereto as Exhibit 4 is a true and correct copy of an email chain between Mr. Fondren and myself dated most recently October 21, 2022. In my October 17, 2022, email, I am asking Mr. Fondren when he sent an order form with which Let's Ride could make an order. I was again seeking to order E-Z-GO products from TSV with the appropriate order form.
- 11. Mr. Fondren responded to my October 17, 2022, email by stating in the first sentence, "After our initial conversation in February, the strategy was to make the necessary improvements to the shop before we discussed placing an order." Mr. Fondren did not provide me either an order form with which to make an order or provide the date on which he allegedly provided such an order form.
- 12. Within approximately a week of July 29, 2022, Let's Ride received a letter from TSV's Corporate Counsel with the subject line "Notice of Breach of Dealer Agreement" ("Notice of Cure Period"). A true and correct copy of the letter is attached hereto as Exhibit 5.
- 13. After receipt of the Notice of Cure Period, I acted to correct the alleged facility deficiencies identified by TSV. Attached hereto as Exhibit 6 is a photograph of the front of Let's Ride's facility. The photograph fairly depicts the front on the Let's Ride facility since approximately October 2019. The Let's Ride facility currently displays the E-Z-GO trademark to the right of the front doors as depicted in the photograph. Let's Ride also displays E-Z-GO signage on the east and west sides of its facility. The signage on the east and west sides of the facility have been displayed since 2017. I ensured the signage on the Let's Ride facility prominently displayed Let's Ride carries E-Z-GO products.
- 14. Even though we have operated our showroom with Yamaha and E-Z-GO since January 2018 without any complaints from TSV, I also removed Yamaha product from Let's Ride's showroom and relocated our official address for Yamaha to our facility in Shafter, California. A true and correct copy of Let's Ride's showroom after we moved our official Yamaha address to Shafter, CA is attached hereto as Exhibit 7. The showroom is clear of Yamaha products and entirely dedicated to E-Z-GO products.

	15.	Based on the Notice of Cure Period, I expected TSV representatives would return to Let's
Ride's	facility	to determine if we had cured the alleged facility deficiencies described in the Notice of
Cure P	eriod.	No TSV representative ever returned to determine if Let's Ride had cured the alleged
deficie	ncies id	entified in TSV's Notice of Cure Period.

- 16. Attached hereto as Exhibit 8 is a true and correct copy of the Notice of Termination received by Let's Ride and described in Let's Ride's Protest. Based on the language in the Notice of Cure Period and the Notice of Termination, I understood TSV would need to return to Let's Ride's facility to determine whether Let's Ride had cured the alleged deficiencies before TSV proceeded with termination. I understood the Cure Period to be an appeal procedure described in the Notice of Termination.
- 17. On or about January 20, 2023, TSV still had not returned to Let's Ride's facility to determine if Let's Ride had cured the alleged facility deficiencies. I prepared and filed a protest on behalf of Let's Ride in the event TSV never returned to determine if Let's Ride cured the alleged deficiencies identified in the Notice of Cure Period.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 1st day of May 2023 at Bakersfield, California.

Darren Fulce President

Let's Ride Motorsports, Inc.

MY'22 CONSUMER ORDER FORM



		CRIS		SUMER
Terms	Delivery Method	DSM Email	DSM	Order Date
Wells EP - 7088 / Sale	Truck	gsalazar@textron.com	Gil Salazar	6/18/2021
	Ship to Address	Ship to Acct #	Dealer Name	Dealer Acct #

TO ORDER A LIBERTY:	ERTY:		Total:	0			*	
Reg Deliv Gov't Po	PO Number	Make	Model	QTY	Platform #	Vehicle Color	Trim I	Trim Package
				-				
emailed	H							
me on								
6/18/21			Total:	0				
TOUR MOT TO EXPECT	LOSAKS	0	Model	QTY	Platform #	Vehicle Color	Seat Color	Tire
PROJECT DON'T PROJECT	, PRIVAG	0	L6 Elite		10013565	Flame Red	Prem Mush	Standard
ישום של המום	COULD.	Ö	L6 72V		10013563	Met Charcoal	Prem Black	Standard
men men		ő	L6 72V		10013563	Flame Red	Prem Black	Standard
MO TIMESON THE CITY THE	TAP JIMESON	ő	L6 Gas		10013564	Bright White	Black	Standard
600	John com	8	L6 72V		10013563	Slate	Prem Black	Standard
Feb		GO	S4 72V		10013560	Slate	Prem Black	Standard
Feb		EZGO	S4 72V		10013560	Met Charcoal	Prem Black	Standard
Feb		EZGO	S4 Gas		10013561	Flame Red	Gray on Black	Standard

Re: MUTUAL TRANSITION AND RELEASE AGREEMENT



From Fondren, Logan < lfondren@textron.com>

To darren@lr-ms.com <darren@lr-ms.com>, Monteith, Steve <smonteith@textron.com>, White, Robert <rwhite@textron.com>

Date 2022-05-04 10:05

Darren

Are you available this coming Tuesday at 1pm? Steve and would like to meet with you at that time.

Thanks,

Logan Fondren, PGA Regional Sales Manager 760.415.9730

Get Outlook for iOS

From: darren@lr-ms.com <darren@lr-ms.com>
Sent: Tuesday, May 3, 2022 2:41:06 PM
To: Fondren, Logan <lfondren@textron.com>
Subject: Re: MUTUAL TRANSITION AND RELEASE AGREEMENT

On 2022-05-02 18:00, Fondren, Logan wrote:

- > Hi Darren.
- > I'm all for forgetting the past and starting fresh. The biggest issue
- > that I have with this is twofold. I reached out on multiple
- > occasions to try and have a conversation with you. I've stopped by,
- > unannounced, at every other dealer in my region and had a 100% success
- > rate in getting a phone call or email within 24 hours. The lack of
- > communication on your part, coupled with zero work being done to your
- > showroom, makes it clear that EZGO is not a priority.
- > When we met in February, Gil was ready to cancel your dealership. I
- > talked him into letting me guide the conversation as I wanted give you
- > a chance to reach out, make some changes and start fresh.
- > Unfortunately, nothing happened.
- >
- > Thanks,
- >
- > Textron Specialized Vehicles
- Prestroir Specialized Verificit
- > C|760.415.9730
- > ----Original Message----

> Logan Fondren, PGA

- > From: darren@lr-ms.com <darren@lr-ms.com>
- > Sent: Monday, May 2, 2022 5:18 PM
- > To: Fondren, Logan < lfondren@textron.com>
- > Subject: Re: MUTUAL TRANSITION AND RELEASE AGREEMENT
- > On 2022-05-02 08:16, Fondren, Logan wrote:
- >> Hi Darren,
- >> While I can appreciate a "new approach", I've made multiple attempts
- >> to contact you to discuss your strategy moving forward. Attached is
- >> the email that I sent after I stopped by on 4/5. According to your
- >> staff, you were leaving for vacation that coming Friday and that you
- >> were currently at the warehouse. While I do understand that you're on
- >> the road a lot, I've left several messages for you to call me so that
- >> we could discuss
- >> When Gil and I stopped by on 2/16, we discussed your strategy to
- >> increase your showroom footprint and you had stated that you would
- >> have some work done within the next 60 days. No changes have been
- >> made, and there has been zero requests to order vehicles since that
- >> first visit. You currently are not compliant with any dealer program
- >> and it's my understanding that this has been the case for quite some

TRIED TO GIVE AN OIZDER AT THIS TIMES

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>> time.
>> Please fill out, and return the mutual transition and release
>> agreement at your earliest convenience.
>>
>> Thanks,
>>
>> Logan Fondren, PGA
>> Textron Specialized Vehicles
>> Cl760.415.9730
>> ----Original Message--
>> From: darren@lr-ms.com <darren@lr-ms.com>
>> Sent: Friday, April 29, 2022 5:34 PM
>> To: Fondren, Logan < lfondren@textron.com>
>> Cc: White, Robert <rwhite@textron.com>; Monteith, Steve
>> <smonteith@textron.com>
>> Subject: Re: MUTUAL TRANSITION AND RELEASE AGREEMENT
>> On 2022-04-29 09:36, Fondren, Logan wrote:
>>> Hi Darren,
>>> I've attempted to contact you over the last couple of weeks regarding
>>> your E-Z-GO agreement and program details, and I've been unable to
>>> reach you. Attached is our mutual termination agreement form; please
>>> review, sign and send back to me.
>>>
>>> As of this email, you have not been compliant with any of E-Z-GO's
>>> programs and it is clear that this move is in the best interest for
>>> both parties.
>>>
>>> Please call me if you have any questions.
>>>
>>> Thanks,
>>>
>>> Logan Fondren, PGA
>>> Textron Specialized Vehicles
>>> C|760.415.9730
>>> _Regional Sales Manager - South West _
>> Hev Logan.
>> Maybe we should try a new approach. How about you make an appointment
>> so I can make sure to be here and be available when you stop in. The
>> first time you came by I was on vacation. Then you must have called
>> the shop phone and not my cell as I was on the road working. The last
>> I heard from you was you were going to come by so we could do an order
>> and then next I hear from you is you wanting me to sign a cancellation
>> form. We still plan to carry your product. I can give you some
>> meeting options and you can give me your availability so we can get an
>> order put together with my team.
>> Darren
>> Let's Ride Motorsports
> Hey Logan,
> Let's try this. You have been adversarial since you first came in with
> Gil. It's no secret that Gil was not fond of us. It's too bad you are
> following his lead instead of trying to change the business
> relationship. The last conversation I had with you in person, you
> said, "I will come back and we can put an order together" which I said
> would be great. And then you come by without bothering to check if I
> am even going to be in. So, again, why don't you start over fresh with
> us and try to build a better relationship instead of going with the
> status quo of the previous rep?
> Darren Fulce
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of 3

> Let's Ride

Logan,

I'm going to run with your first sentence of this reply. So let's start fresh and put an order together. I can put one together and send it in or you can come by and we can do it person. That way we can make sure it gets processed. We can look at delivery times too and see how it aligns with the changes we are doing to the shop.

Darren

RE: MUTUAL TRANSITION AND RELEASE AGREEMENT



From Fondren, Logan < lfondren@textron.com>

To darren@lr-ms.com <darren@lr-ms.com>

Cc White, Robert <rwhite@textron.com>, Monteith, Steve <smonteith@textron.com>

Date 2022-05-02 08:16

Part 2.eml (~46 KB)

Hi Darren,

While I can appreciate a "new approach", I've made multiple attempts to contact you to discuss your strategy moving forward.

Attached is the email that I sent after I stopped by on 4/5. According to your staff, you were leaving for vacation that coming Friday and that you were currently at the warehouse. While I do understand that you're on the road a lot, I've left several messages for you to call me so that we could discuss.

When Gil and I stopped by on 2/16, we discussed your strategy to increase your showroom footprint and you had stated that you would have some work done within the next 60 days. No changes have been made, and there has been zero requests to order vehicles since that first visit. You currently are not compliant with any dealer program and it's my understanding that this has been the case for quite some time.

Please fill out, and return the mutual transition and release agreement at your earliest convenience.

Thanks,

togan Fondren, PGA
Textron Specialized Vehicles
C|760.415.9730

----Original Message----

From: darren@lr-ms.com <darren@lr-ms.com>
Sent: Friday, April 29, 2022 5:34 PM
To: Fondren, Logan <lfondren@textron.com>

Cc: White, Robert <rul>rwhite@textron.com>; Monteith, Steve <smonteith@textron.com>

Subject: Re: MUTUAL TRANSITION AND RELEASE AGREEMENT

On 2022-04-29 09:36, Fondren, Logan wrote:

Hi Darren,

I've attempted to contact you over the last couple of weeks regarding your E-Z-GO agreement and program details, and I've been unable to reach you. Attached is our mutual termination agreement form; please review. sign and send back to me.

As of this email, you have not been compliant with any of E-Z-GO's programs and it is clear that this move is in the best interest for both parties.

Please call me if you have any questions.

Thanks,

Logan Fondren, PGA

Textron Specialized Vehicles

C 760.415.9730

_Regional Sales Manager - South West

Hey Logan

Maybe we should try a new approach. How about you make an appointment so I can make sure to be here and be available when you stop in. The first time you came by I was on vacation. Then you must have called the shop phone and not my cell as I was on the road working. The last I heard from you was you were going to come by so we could do an order and then next I hear from you is you wanting me to sign a cancellation form. We still plan to carry your product. I can give you some meeting options and you can give me your availability so we can get an order put together with my team.

Darren Let's Ride Motorsports

From Fondren, Logan < lfondren@textron.com>

To <darren@ir-ms.com>
Date 2022-04-08 09:43

Hi Darren,

I stopped by earlier this week to check on the progress of the showroom at your facility. As you recall, the goal was to make some progress in improving the retail space when we met in February. As of my visit this week, no progress had been made. I have also yet to see any requests for vehicles and no parts have been

Please give me a call when you're available to discuss our plan for your business going forward.

Thanks,

Logan Fondren, PGA **Textron Specialized Vehicles** C|760.415.9730

Regional Sales Manager - South West















2nd half MY2022 Dealer Program, Benefits, Contact List, Price Pages, & Order Form

From Fondren, Logan < lfondren@textron.com>

To Fondren, Logan < Ifondren@textron.com>

Date 2022-02-28 16:51

MY2022 Price Pages 2nd Half.zip (~6.6 MB) 32021 Warranty Statements.zip (~2.3 MB) MY22 Consumer Order Form v5.xlsm (~200 KB)

🔁 2022 TSV POC Quick Reference PTV Dealer.pdf (~235 KB) 🗓 CON-0122-Dealer Products and Pricing Program Updates.pdf (~1.6 MB)

NO ORDER ACCEPTED
NO ORDER FORM ATTACHED

of?



Valued Dealer Partner,

I am pleased to share our current Dealer programs and pricing documents with you. I strongly recommend you print these important documents so you can have them handy. Attached are the following documents;

- 2022 Dealer Program & Benefit Levels
- Updated Point of Contact list
- MY2022 pricing for E-Z-GO, Cushman, Custom, and Freight pages (Current and updated on Promoboxx)
- Current E-Z-GO & Cushman Warranty Statements
- New MY 2022 Order Form (only form accepted and required on all new vehicle orders)

Please use the following links for the following;

- Dealer Marketing Handbook.
- E-Z-GO dealers can log in to the BrandStore via TSVConnect. Click BrandStore in the Partner Actions section.

Thanks,

Logan Fondren, PGA **Textron Specialized Vehicles** C|760.415.9730

Regional Sales Manager - South West















RE: Question



From Fondren, Logan Logan <a href="m

Date 2022-10-21 14:00

Hi Darren,

After our initial conversation in February, the strategy was to make the necessary improvements to the shop before we discussed placing an order. When I returned on 4/5, no changes or improvements had been made. I left my card for you to call to discuss - no reply. We met again on 5/10 to discuss mutual separation as no improvements had been made and there had been no communication from you.

Thanks,

Logan Fondren, PGA Textron Specialized Vehicles C|760.415.9730

----Original Message----

From: darren@lr-ms.com <darren@lr-ms.com>
Sent: Monday, October 17, 2022 16:49
To: Fondren, Logan <lfondren@textron.com>

Subject: Question

Logan,



Have you ever sent me the order form with which I can make an order? If so, what was the date?

Thanks,

Darren



Via Federal Express

Mr. Darren Fulce Let's Ride Motorsports, Inc. 5959 Rosedale Hwy Bakersfield, CA 93308

NOTICE OF BREACH OF DEALER AGREEMENT

Dear Mr. Fulce:

In accordance with Section 24(c) of your dealer agreement (the "Agreement") with Textron Specialized Vehicles Inc. ("TSV"), we hereby notify you that you are in material breach of and have failed to perform your obligations under Sections 3(a), 3(g), 4(a), 4(b), 4(d), 5(a), 8(a), 10(a), 14(a), and 18 of the Agreement.

Our records indicate your dealership has failed to purchase any representative vehicle inventory of E-Z-GO products within the preceding eighteen (18) months. As a result, your dealership has not sold a vehicle to a consumer in over twelve (12) months. TSV has requested your dealership place vehicle orders numerous times, but you have chosen not to do so and continue to hold no inventory. 1

These shortcomings were discussed during a performance review in February 2022, at which time you committed to coming into compliance with E-Z-GO's dealer and stocking programs. That commitment involved making improvements to your dealership's showroom layout and appearance, signage, and dedicated E-Z-GO floor space such that your dealership could meet its obligations under the Agreement. You committed to making those changes within sixty (60) days, yet still none of them have occurred. In the meantime, your dealership made various late payments on parts orders. It also appears you have been unresponsive and unavailable to meet with your Regional Sales Manager to address these lingering concerns.

TSV is providing this notice in good faith, and requesting your dealership cure these breaches within ninety (90) days of this notice ("Cure Period") by complying with and fulfilling your obligations under each of the above-referenced provisions of the Agreement. If the breaches are not remedied to Company's satisfaction, and in Company's sole discretion, at the end of the Cure Period, TSV will initiate termination of the Agreement, pursuant to Section 24(c) and in accordance with any applicable state law.

Lastly, TSV requests that you please update your website to (1) comply with the E-Z-GO dealer website policy, and (2) remove any use of the Cushman

¹ The last two order forms you attempted to submit were invalid due to substantive and procedural deficiencies and, as such, are rejected by E-Z-GO.













July 29, 2022 Page 2 of 2

trademarks. The Agreement does not call for your dealership to carry Cushman products or allow for their retail. As such, TSV expects that you refrain from representing your dealership as an authorized seller of Cushman vehicles.

If you have any questions, concerns, or issues related to this notice, or if you intend to waive the Cure Period or otherwise voluntarily terminate the Agreement, please reach out to your Regional Sales Manager.

Best Regards,

Brendan Sullivan Corporate Counsel

CC: Damon Kull, Director, Consumer Sales Steve Monteith, Channel Development Manager Logan Fondren, Regional Sales Manager, Consumer Gil Salazar, Regional Sales Manager, Commercial

LET'S RIDE MOTORSPORTS







Via Federal Express

Mr. Darren Fulce Let's Ride Motorsports. Inc. 5959 Rosedale Hwy Bakersfield, CA 93308

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days after receiving this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived.

NOTICE OF DEALER TERMINATION PURSUANT TO CAL. VEH. CODE § 3060(a)(1)

Mr. Fulce:

By notice dated July 29, 2022, Textron Specialized Vehicles Inc. ("TSV") notified your dealership, Let's Ride Motorsports, Inc ("Dealer"), that it was in material breach of the E-Z-GO Retail Dealership Agreement between TSV and Dealer, effective January 1, 2021 (the "Agreement"). TSV informed Dealer of numerous violations of the Agreement and gave Dealer ninety (90) days to cure those breaches. Dealer took no corrective action and continues to fail to comply with its obligations as an E-Z-GO dealer. As such, TSV hereby provides sixty (60) days' advance written notice to Dealer that TSV intends to terminate the Agreement pursuant to Section 24(c) thereof, for good cause.

As good cause for the termination, TSV cites Dealer's failure to comply with the following material terms of the Agreement:

- a. Lack of any retail sales of E-Z-GO vehicles or efforts to promote the same, and failure to maintain an inventory of current E-Z-GO products or display the same to the public, in violation of the sales responsibilities outlined in Sections 3(a) and 3(g) of the Agreement. Dealer has not purchased any representative vehicle inventory of E-Z-GO products in nearly two years and has not sold a new vehicle to a consumer since June 2021.
- b. Failure to maintain stock inventory of or prominently display a minimum model representation of current-year vehicles Dealer is authorized to sell, as outlined in Sections 4(a), 4(b), and 4(d) of the Agreement. In fact, Dealer has no E-Z-GO inventory whatsoever and thus no E-Z-GO vehicles displayed in its showroom.
- c. Poor product sales performance, as measured under Section 5(a) of the Agreement. Dealer's retail sales numbers have steadily declined since 2019, down to zero in 2022.
- d. Failure to properly submit orders, as required by Section 8(a) of the Agreement. Dealer has submitted two minimal orders over the past two years, with both order forms missing necessary information. When prompted to correct those orders, Dealer chose not to do so, and rather continues to hold no inventory.
- e. Failure to maintain satisfactory dealership facilities or adequate display space to enable Dealer to meet its obligations under the Agreement, as set forth in Section 14(a) thereof. Dealer's showroom does not contain adequate space to display the various E-Z-GO models Dealer is authorized to sell. Dealer committed to expanding the showroom to enable such representation. but then made no such changes. To date, Dealer still dedicates its limited space to only competitive-brand vehicles.













November 29, 2022 Page 2 of 2

f. Absence of any E-Z-GO signage to identify Dealer's affiliation with the franchise, as required by Section 18 of the Dealer Agreement, such that the public is unaware Dealer is authorized to sell E-Z-GO products. Dealer's road sign displays only a competitive brand.

In addition to these extensive failures by Dealer to comply with material terms of the E-Z-GO franchise, further good cause for termination of the Agreement exists from: the lack of E-Z-GO business transacted by Dealer; the lack of investment by Dealer in performing its part of the E-Z-GO franchise; and Dealer's inadequate sales facilities, equipment, and rendering of E-Z-GO services to the public. As a result, it would not be injurious to the public welfare if Dealer's E-Z-GO franchise were disrupted.

Under CAL. VEH. CODE § 3060(a)(1), TSV is required to provide Dealer advance written notice of termination, with a termination date not in advance of at least sixty (60) days following receipt of the notice (the "Notice Period"). This letter, therefore, shall serve as notice to Dealer of TSV's intent to terminate the Agreement in good faith, and for good cause, on January 30, 2023.

If you have any questions, concerns, or issues related to this notice, or if you intend to waive the Notice Period or otherwise voluntarily terminate the Agreement, please reach out to your Regional Sales Manager.

Best Regards.

Brendan Sullivan Corporate Counsel

CC:

California Department of Motor Vehicles, New Motor Vehicle Board Damon Kull, Director, Consumer Sales Abigail Muldoon, Channel Development Manager Logan Fondren, Regional Sales Manager

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NELSON MULLINS RILEY & SCARBOROUGH LLP Attorneys at Law

VIA EMAIL

NELSON MULLINS RILEY & SCARBOROUGH LLP

Amy M. Toboco (SBN 149508)

19191 South Vermont Avenue, Suite 900

Torrance, CA 90502

Telephone: 424.221.7400 Facsimile: 424.221.7499

E-Mail: amy.toboco@nelsonmullins.com

Paul T. Collins (admitted *pro hac vice*) Patrick D. Quinn (admitted *pro hac vice*)

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

7 Columbia, SC 29201

Telephone: (803) 799-2000

E-Mail: paul.collins@nelsonmullins.com patrick.quinn@nelsonmullins.com

Attorneys for Respondent

New Motor Vehicle Board

Received 5-8-23

FILED

New Motor Vehicle Board

Date: 5-8-23

By: am

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of:

Let's Ride Motorsports Inc.,

Protestant,

v.

Textron Specialized Vehicles Inc.,

Respondent.

Case No. PR-2815-23

RESPONDENT TEXTRON SPECIALIZED VEHICLES INC.'S REPLY IN SUPPORT OF MOTION TO DISMISS PROTEST

Hearing Date: May 18, 2023

Time: 9:00 a.m.

Respondent Textron Specialized Vehicles Inc. ("TSV"), by and through its undersigned counsel, submits the following Reply in support of its Motion to Dismiss Protest in the above-captioned matter.

I. <u>INTRODUCTION</u>

In its Opposition, Protestant Let's Ride Motorsports, Inc. ("Protestant") is asking the New Motor Vehicle Board (the "Board") to ignore the plain and clear statutory language as well as legislative intent of California Vehicle Code section 3060. Specifically, Protestant asks the Board to construe TSV's notice of breach¹ of the E-Z-GO Retail Dealership Agreement between TSV and

¹ For the first time in its Opposition, Protestant alleges that TSV sent Protestant a notice of breach dated July 29, 2022 and Protestant made attempts to cure the breaches identified in the notice of breach. In fact, the Protest is devoid of any allegations whatsoever regarding any occurrences prior to

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Protestant (the "Agreement") which provided Protestant with ninety (90) days to cure the breaches as creating an "appeal procedure" within the meaning of California Vehicle Code section 3060(a)(2). (See Protestant's Opposition to Respondent TSV's Motion to Dismiss Protest ("Opp.") at 6-7). According to Protestant, this purported appeal procedure exists in perpetuity, or at least until TSV visits Protestant's facility in-person, despite the fact that the notice of breach expressly provided that the decision to initiate termination of the Agreement at the end of the cure period was at TSV's "sole discretion" and TSV exercised said sole discretion by issuing the written notice of termination dated November 29, 2022 to Protestant and the Board (the "Notice"). (See Opp. at 7).

Protestant argues that TSV's failure to return to Protestant's facility to determine whether Protestant cured the alleged deficiencies identified in the notice of breach means the 90-day notice of cure period or "appeal process" has not lapsed. (Opp. at 5). Consequently, Protestant contends it has thirty (30) calendar days following the end of the appeal procedure (which is purportedly ongoing) to file a termination protest and, thus, the Protest, although admittedly filed more than 30 days after receipt of the Notice, was timely filed. (See Opp. at 5). Additionally, Protestant contends that the Board has jurisdiction over the Protest simply because Protestant filed the Protest before the *effective date* of termination. (See Opp. at 10).

Protestant's arguments are illogical and unsound, and do not support any viable basis to contest the termination which was *automatically* effective January 30, 2023, sixty (60) days from the date Protestant and the Board received the Notice based on Protestant's failure to file the Protest within 30 (thirty) days of Protestant's receipt of the Notice. These facts cannot be reasonably disputed. Because Protestant failed to timely file the Protest, the Board does not have jurisdiction over the Protest. Moreover, it would be futile and a waste of public funds for the Board to conduct a hearing on any disputes concerning facts improperly raised for the first time in Protestant's Opposition. (See Opp. at 11 (requesting a preliminary hearing to resolve any "factual disputes

December 15, 2022, the date Protestant alleges it received the Notice. For this reason, the notice of breach, which was superseded by the Notice, should not be considered by the Board in ruling on TSV's Motion to Dismiss. See, e.g., Laabs v. City of Victorville, 163 Cal. App. 4th 1242, 1252-58, 78 Cal. Rptr. 3d 372, 386 (2008), as modified on denial of reh'g (July 7, 2008) (holding that the plaintiff cannot introduce new issues through new factual allegations raised for the first time in the plaintiff's opposition brief).

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concerning when TSV's Notice of Cure Period may have ended")).

PROTESTANT RECEIVED THE STATUTORY NOTICE AND FAILED TO II. TIMELY PROTEST

Protestant does not allege any defect in the statutory notice provided to it; rather, Protestant argues that the 90-day notice of cure period provided in the notice of breach, which pre-dated the Notice, created an "appeal procedure" under California Vehicle Code section 3060(a)(2). (Opp. at 8). Protestant acknowledges that it did not file the Protest within thirty days of receipt of the Notice, ² and relies solely on the cure period which it alleges has not expired because TSV allegedly did not return to "[Protestant's] facility to determine whether any corrective action had been taken and whether it cured TSV's [sic] alleged breaches to TSV's satisfaction." (Opp. at 7-8). Protestant's argument is flawed for several reasons.

First, the cure period provided in the notice of breach was for a limited duration, ninety days of the notice of breach, and thus expired **October 27, 2022**. Thus, even assuming that the notice of breach created an appeal procedure (which, as explained below, it did not), that procedure terminated on its own terms by no later than October 27, 2022, and so the Protest remains untimely. See Cal. Veh. Code § 3060(a)(2) ("The franchisee may file a protest with the board . . . within 10 days after the end of any appeal procedure provided by the franchisor.").

Second, pursuant to the notice of breach, it was within TSV's "sole discretion" to terminate the Agreement pursuant to Section 24(c) of the Agreement and in accordance with California law. TSV exercised its discretion by issuing the Notice more than thirty (30) days after the expiration of the cure period.

Third, the Notice superseded the notice of breach and clearly provided Protestant with notice that the Agreement would terminate on January 30, 2023. (See Declaration of Jason Britt ("Britt Decl.) ¶ 2, Ex. A). TSV's Notice contained the language mandated by California Vehicle Code section 3060(a)(1)(C), and it was in the proper format that made the specific content conspicuous.

² For purposes of TSV's Motion to Dismiss, it is immaterial whether or not Protestant received the Notice on November 30, 2022 or December 15, 2022 (as alleged by Protestant). The Protest is still untimely filed.

³ Conveniently, Protestant only once acknowledges that the duration of the cure period was ninety (90) days. (See Opp. at 4).

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The conspicuous language included the following:

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days after receiving this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived.

(Britt Decl., Ex. A). Despite the foregoing clear and conspicuous language which provided Protestant with the requisite statutory notice that it had thirty (30) days to file a protest, Protestant now contends that "it reasonably believed TSV could not proceed with termination without ever checking whether Let's Ride made the changes identified in the Notice of Cure Period." (Opp. at 2-3).

Fourth, TSV's Notice stated that the Agreement was being terminated pursuant to Section 24(c) of the Agreement. Thus, if Protestant had any questions concerning the alleged "appeal procedure," it should have directed its attention to Section 24(c) of the Agreement which sets forth the termination procedure, which (unsurprisingly) does not include any appeal process or procedure in the event of termination. (See Supplemental Declaration of Jason Britt ("Supp. Britt Decl.") ¶¶ 2-3, Ex. A).

Fifth, Protestant does not allege that it requested an appeal nor requested that TSV visit its facility. Notably missing from the Protest (and Opposition) are any allegations that there was any correspondence between the parties after October 27, 2022, the expiration of the 90-day cure period provided in the notice of breach. (See generally Protest; see also Declaration of Darren Fulce ("Fulce Decl.")). Rather, Protestant alleges that it idly waited for TSV to visit Protestant's facility and continued to wait after the expiration of the 30-day statutory period to file a protest, before filing the Protest. (Opp. at 3-6).

In sum, there was no reasonable basis for Protestant to believe that, notwithstanding the issuance of the Notice dated November 29, 2022, Protestant was engaged in an appeal process that tolled the deadline to file this Protest. Moreover, it was also not reasonable for Protestant to wait on TSV to visit Protestant's facility before exercising its right to protest under the California Vehicle Code. Because TSV has no appeal procedure (whether under the Agreement, Notice, notice of

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breach, or other written document or correspondence between the parties), Protestant was required to file its Protest within thirty (30) days of receipt of the Notice. Protestant's failure to do so mandates the dismissal of the Protest with prejudice.

III. THE BOARD DOES NOT HAVE JURISDICTION OVER AN UNTIMELY PROTEST

California Vehicle Code section 3060(a)(2) provides, "When a protest is filed, the board shall advise the franchisor that a timely protest has been filed." TSV met all the conditions of termination of a franchise; that is, proper notice satisfying the requirements of Cal. Vehicle Code section 3060 was given and received and Protestant failed to timely file a protest. See Cal. Veh. Code §3060(a)(3) (The final condition of termination of a franchise is satisfied where, "[t]he franchisor has received the written consent of the franchisee, or the appropriate period for filing a protest has elapsed.") (emphasis added); see also Sonoma Subaru, Inc. v. New Motor Vehicle Bd. (1987) 189 Cal. App. 3d 13, 22 (concluding "[w]here no protest of the termination is filed within the allotted time, the Legislature's obvious intent is to let the franchisor treat the termination as final and effective"); San Jose Yamaha Powersports v. Yamaha Motor Corp., Protest No. PR-2394-14 (Cal. NMVB Dec. 12, 2014) (TSV's Request for Official Notice, Ex. 2, Recommendation by ALJ Anthony M. Skrocki, p. 13 ¶¶ 49, 53).

Thus, TSV's Notice effectively terminated Protestant's E-Z-GO franchise as of January 30, 2023. The fact that Protestant filed the Protest before the effective date of termination has no bearing on the status of the termination despite Protestant's contention otherwise. (Opp. at 9). Where similar arguments were presented in a case also involving an untimely protest of a 60-day notice of termination before Administrative Law Judge Anthony M. Skrocki, Judge Skrocki specifically found (and the Board adopted his findings) that because proper notice was given and received and the protesting dealer failed to file a timely protest, the protest should be dismissed "[a]s there is no longer a 'franchise' in existence between the parties, and thus, [the protesting dealer] is no longer a 'franchisee', ... [and] the Board no longer has jurisdiction over the dispute and is without the power to act on the protest." (San Jose Yamaha Powersports, Protest No. PR-2394-14 (TSV's Request for Official Notice, Ex. 2, Recommendation, p. 13, ¶ 53)). Judge Skrocki further opined, "[e]ven if

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there is some basis for finding continuing jurisdiction over the Protest (perhaps because there was a 'franchise' in existence when the protest was filed and San Jose Yamaha was a 'franchise' at the time), . . . the issues raised by the notice and protest filed in response thereto are moot as there is no longer a franchise in existence." (TSV's Request for Official Notice, Ex. 2, Recommendation, p. $13 \, \P \, 54).^4$

The clear language of Section 3060 establishes that a dealer may maintain a protest, and the Board has jurisdiction to hear the protest, *only* if the dealer timely files its protest "[w]ithin 30 days after receiving a 60-day notice, satisfying the requirements of this section." Cal. Veh. Code § 3060(a)(2). In this action, it cannot be reasonably disputed that the Notice was issued by TSV on November 29, 2022, by mail, and was received by Protestant and the Board on November 30, 2022 and December 1, 2022, respectively. (Britt Decl. ¶¶ 3-4, Exs. B-E). Accordingly, pursuant to California Vehicle Code section 3060(a)(2), Protestant was required to file any protest on or before January 3, 2023. Also undisputed is the fact that Protestant waited until January 24, 2023 to file the Protest.⁵ For these reasons, it is clear the Board lacks jurisdiction over this matter, and thus, the Protest must be dismissed.

IV. **CONCLUSION**

For the reasons outlined above, TSV respectfully requests that the Board dismiss the Protest with prejudice.

DATED: May 8, 2023 Respectfully submitted,

> By: <u>/s/Paul T. Collins</u> Amy M. Toboco (SBN 149508) Paul T. Collins (Admitted *Pro Hac Vice*) Patrick D. Quinn (Admitted *Pro Hac Vice*)

> > Attorneys for Respondent

Protestant's Opposition takes issue with Respondent's citation to non-precedential Board decisions. Regardless of whether these decisions were formally designated as precedent, the Board's recent decisions in those actions are highly instructive and pertinent on the scope of its jurisdiction and how a dealer's failure to timely exercise its protest rights divests the Board of subject matter jurisdiction. Both decisions interpret the protest procedures strictly and demonstrate that an untimely protest cannot be excused for the sake of equity or other considerations.

⁵ Assuming arguendo that Protestant did not receive the Notice until December 15, 2022 as alleged in the Protest (although contradicted by Federal Express tracking), the deadline for Protestant to file the Protest would have been January 16, 2023.

PROOF OF SERVICE (CCP § 1013(a) and 2015.5)								
The undersigned attorney certifies that on the 8^{th} day of May, 2023, the foregoing document entitled RESPONDENT TEXTRON SPECIALIZED VEHICLES INC.'S REPLY IN SUPPORT OF MOTION TO DISMISS PROTEST was served on all the appearing and/or interested parties in this action by placing \Box <i>the original</i> \boxtimes <i>a true copy</i> thereof as follows:								
[by ELECTRONIC SERVICE] - By transmitting such document(s) electronically from my e-mail address, paul.collins@nelsonmullins.com, to the person(s) at the electronic mail addresses listed in the attached Service List.								
Executed May 8, 2023 at Columbia, South Carolina.								
/s/Paul T. Collins								

SERVICE LIST

NEW MOTOR VEHICLE BOARD

1507 – 21stStreet, Suite 330 Sacramento, CA 95811 Telephone: (916) 445-1888

Email: nmvb@nmvb.ca.gov

robin.parker@nmvb.ca.gov

danielle.phomsopha@nmvb.ca.gov

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New Motor Vehicle Board

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mayville@hughesdealerlaw.com

VIA EMAIL

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Attorneys for Respondent

New Motor Vehicle Board

Received 5-8-23

FILED

New Motor Vehicle Board

Date: 5-8-23

By: am

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of:

Let's Ride Motorsports Inc.,

Protestant,

110000

V.

Textron Specialized Vehicles Inc.,

Respondent.

Case No. PR-2815-23

SUPPLEMENTAL DECLARATION JASON BRITT IN SUPPORT OF RESPONDENT TEXTRON SPECIALIZED VEHICLES INC.'S REPLY IN SUPPORT OF MOTION TO DISMISS PROTEST

Hearing Date: May 18, 2023

Time: 9:00 a.m.

I, Jason Britt, declare as follows:

1. I am Assistant General Counsel for Respondent Textron Specialized Vehicles Inc. ("TSV"). I am competent to attest to the matter set forth in this declaration and the attachment thereto. The following statements are made according to a complete review of TSV's records kept in the regular and ordinary course of business. I submit this Declaration in support of TSV's Reply in Support of its Motion to Dismiss Protest. If called to testify I could and would accurately testify to the following under oath.

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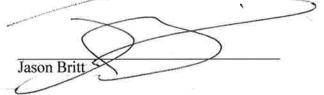
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	2.	Protestant	and '	TSV	are	parties	to a	E-Z-G	O R	Letail	Dealers	hip	Agreement	dated
January	y 1, 20	21 (the "Ag	reem	ent")	. A	true and	l com	rect cop	y of 1	the A	greemei	nt is	attached her	reto as
Exhibi	t A.													

3. Section 24(c) of the Agreement sets forth the termination procedure. The Agreement does not include any appeal process or procedure in the event of termination.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 8th day of May, 2023 at Augusta, Georgia.



PROOF OF SERVICE (CCP § 1013(a) and 2015.5)

The undersigned attorney certifies that on the 3^{rd} day of April, 2023, the foregoing document entitled SUPPLEMENTAL DECLARATION OF JASON BRITT IN SUPPORT OF TEXTRON SPECIALIZED VEHICLES INC.'S REPLY IN SUPPORT OF MOTION TO DISMISS PROTEST was served on all the appearing and/or interested parties in this action by placing \Box the original \boxtimes a true copy thereof as follows:
[by ELECTRONIC SERVICE] - By transmitting such document(s) electronically from my e-mail address, paul.collins@nelsonmullins.com, to the person(s) at the electronic mail addresses listed in the attached Service List.
Executed May 8, 2023 at Columbia, South Carolina.
/s/Paul T. Collins

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mayville@hughesdealerlaw.com

EXHIBIT A

E-Z-GO Retail Dealership Agreement (U.S)

This U.S. Dealer Agreement ("Agreement"), dated as of January 1, 2021 ("Effective Date"), is entered into by and between Textron Specialized Vehicles Inc., its subsidiaries and affiliates, including E-Z-GO Division of Textron Inc., and assigns (hereinafter "E-Z-GO"), having its principal place of business at 1451 Marvin Griffin Road, Augusta, Georgia 30906 and LET'S RIDE MOTORSPORTS, INC 700005303

having a principal place of business at 5959 ROSEDALE HWY, BAKERSFIELD, California 93308 (hereinafter the "Dealer").

WHEREAS, E-Z-GO is a manufacturer and distributor of recreational off-highway vehicles ("ROHV(s)"), personal transportation vehicles ("PTV(s)"), and on-road low-speed vehicles ("LSV(s)").

WHEREAS, Dealer, an independent business maintaining physical retail operations at the DEALER LOCATION and BRANCH LOCATIONS(S) desires to sell and to service selected PRODUCTS manufactured or distributed by E-Z-GO.

WHEREAS, Dealer has made certain representations to E-Z-GO regarding the financial stability, available retail space, customer service capabilities, and sophistication in the sale of ROHVs, PTVs, and LSVs which E-Z-GO has relied on.

WHEREAS, E-Z-GO, based on Dealer's representations, desires to authorize Dealer to sell and service selected PRODUCTS manufactured or distributed by E-Z-GO in accordance with the terms of this Agreement.

NOW THEREFORE, IN CONSIDERATION of the representations and promises contained in this Agreement, E-Z-GO and Dealer agree as follows:

1. DEFINITIONS

The following definitions shall apply throughout this Agreement:

- a. BRANCH LOCATION(S) shall mean the secondary place or places of business of Dealer, as agreed to by the parties in writing, designated for the sales and/or servicing of PRODUCTS under this Agreement separate from the Dealer's principal place of business.
- b. DEALER LOCATION shall mean the place or places of business of the Dealer designated as 5959 ROSEDALE HWY, BAKERSFIELD, California 93308 for sale and service of PRODUCTS, including any BRANCH LOCATION(S).
- c. DEALER PRICE shall mean the price to the Dealer for PRODUCTS established by E-Z-GO from time to time excluding any holdback, deposit or charge by E-Z-GO for taxes, handling, delivery, transportation or special items or services.

- d. DOMESTIC shall mean within the fifty (50) states of the United States of America.
- e. GENUINE PARTS shall mean new, genuine E-Z-GO manufactured or sourced parts, assemblies, subassemblies, components, apparel, garments, and accessories.
- f. MANUAL shall mean the E-Z-GO warranty provisions associated with each LINE-MAKE or individual VEHICLE (or the equivalent document or documents) and any amendments thereto as may be made from time to time by E-Z-GO, which document is made part of this Agreement.
- g. NON-EXCLUSIVE shall mean that Dealer may market and sell PRODUCT in the PAR, that other dealers may sell E-Z-GO PRODUCTS to customers within the Dealer's designated PAR, and that Dealer has no actual or implied right, contractual or otherwise, to be the only E-Z-GO dealer located in the designated PAR or any geographic area. E-Z-GO has no actual or implied obligation, contractual or otherwise, to forgo placing a new E-Z-GO dealer or dealer selling location in Dealer's designated PAR or any given geographic area, and may in fact appoint such new E-Z-GO dealers or locations at any time, whether independent or manufacturer-owned.
- h. PRIMARY AREA OF RESPONSIBILITY ("PAR") shall mean the geographic area for which Dealer has sales and service responsibility for PRODUCTS as agreed to by the parties in writing. The PAR is NON-EXCLUSIVE, and is used solely to measure the Dealer's sales performance.
- i. PRINCIPAL DEALER LOCATION shall mean the DEALER LOCATION.
- j. PRODUCT(S) shall mean VEHICLES and GENUINE PARTS. Dealer acknowledges that the PRODUCTS are not farm, construction, utility, industrial or outdoorpower equipment.
- k. PRODUCT AND PRICING PROGRAM shall mean the latest E-Z-GO bulletin (or equivalent document or documents), which sets forth the DEALER PRICE, terms of sale, financing options and ordering procedure applicable to the sale of PRODUCTS to Dealer.
- 1. LINE-MAKE(S) shall mean the following PRODUCTS as indicated by E-Z-GO below:
 - × E-Z-GO™ FREEDOM SERIES ELITE LITHIUM and related GENUINE PARTS.
 - × E-Z-GO™ FREEDOM SERIES GAS and related GENUINE PARTS.
 - × E-Z-GO™ FREEDOM SERIES ELECTRIC and related GENUINE PARTS.

- X E-Z-GO™ EXPRESS SERIES ELITE LITHIUM and related GENUINE PARTS.
- | X | E-Z-GO™ EXPRESS SERIES GAS and related GENUINE PARTS.
- | E-Z-GO™ EXPRESS SERIES ELECTRIC and related GENUINE PARTS.
- X E-Z-GOTM VALOR SERIES GAS and related GENUINE PARTS.
- X E-Z-GOTM VALOR SERIES ELECTRIC and related GENUINE PARTS.
- | X | E-Z-GO™ LSVs and related GENUINE PARTS.
- m. VEHICLE(S) shall mean those models of new and used vehicles that are designated by E-Z-GO and grouped by brand or vehicle type. E-Z-GO reserves the absolute and sole right to determine what VEHICLE(S) it will offer Dealer for sale.

2. APPOINTMENT

- a. E-Z-GO appoints Dealer as a NON-EXCLUSIVE Dealer solely for the sale and service of the designated LINE-MAKES to DOMESTIC consumers at the DEALER LOCATION and BRANCH LOCATION(S); and Dealer accepts this appointment. Under this appointment, Dealer is authorized to sell PRODUCTS to DOMESTIC retail consumers as described herein with delivery to occur exclusively at DEALER LOCATION and BRANCH LOCATION(S). For the avoidance of doubt, this appointment does not authorize DEALER to sell PRODUCTS through e-commerce websites or tools, without the express written agreement of E-Z-GO. This Agreement is independent and separately enforceable for each designated LINE-MAKE, and the use of this common Agreement is intended to simplify the execution of the Agreements. This Agreement grants Dealer no rights to purchase or sell any other E-Z-GO LINE-MAKES other than those specifically designated herein. Any sale of E-Z-GO PRODUCT for export or from a location not authorized herein or with the prior written consent of E-Z-GO shall constitute a material breach of this Agreement.
- b. Dealer recognizes that PRODUCTS purchased by Dealer are manufactured to meet the requirements of Dealer's state and country may not meet the requirements imposed by countries other than the United States, or states other than those of Dealer's PRIMARY LOCATION. Accordingly, Dealer shall not sell PRODUCTS to end users in other countries or states or to any purchaser who purchases the same for shipment to a final destination located outside the United States unless Dealer knows that the qualified end user will use and store their PRODUCTS in the United States on a continual basis. Should

Dealer violate the provisions of this paragraph, E-Z-GO may assess Dealer twenty-five percent (25%) of the dealer cost of each PRODUCT that Dealer sells in violation of the terms of this paragraph. E-Z-GO may withhold and/or reverse any E-Z-GO incentives or programs related to the sale of any unit that is sold in violation of the terms of this paragraph. E-Z-GO shall have the right, in its sole discretion, to pay the twenty-five percent (25%) that is collected to the dealer who reported the violation or to the dealer or dealers who are most affected by the sale.

c. Dealer recognizes that PRODUCTS are subject to regulation in the United States by the U.S. Consumer Product Safety Commission ("CPSC") and Dealer agrees to be bound by any agreement between the CPSC and E-Z-GO.

3. SALES RESPONSIBILITY

- a. Dealer agrees to vigorously and aggressively promote the sale of PRODUCTS in order to assure maximum sales of PRODUCTS. Furthermore, Dealer agrees to obtain (i) a reasonable share of Dealer's designated PAR and (ii) a reasonable total sales revenue for all PRODUCTS which dealer is authorized to sell as agreed to by the parties.
- b. Dealer agrees to develop, maintain and direct a sufficient number of trained, qualified sales personnel, and shall conduct aggressive advertising and sales promotion activities. Dealer sales and service personnel shall complete annual E-Z-GO training associated with each LINE-MAKE.
- c. All sales of the PRODUCT made by E-Z-GO to Dealer shall be in accordance with this Agreement and E-Z-GO's terms and conditions of sale in effect on the date of sale (the "Terms"). In case of any inconsistency, ambiguity, or conflict between this Agreement and E-Z-GO's terms and conditions of sale, the terms of this Agreement shall prevail. E-Z-GO's Terms shall not be altered or modified by the provisions of any purchase order or other instrument furnished or offered by Dealer even though shipment is made by E-Z-GO against such purchase order or other instrument. E-Z-GO hereby rejects any term or condition in Dealer's forms or other purchase documents that are inconsistent with the Terms.
- d. Dealer agrees to refrain from the purchase of PRODUCTS from dealers located outside of the United States for resale in the United States.
- e. Dealer agrees to sell PRODUCTS only to qualified end users or other E-Z-GO Dealers currently authorized to sell the particular PRODUCT to be sold. A qualified end user is any customer who is qualified to operate the PRODUCTS and purchases a PRODUCT for use, lease, or rent, but not for resale, and who falls in the appropriate age category for such PRODUCTS use. Delivery of units is required to be made in person to the qualified end user, not through any third party, sub dealer or delivery service.
- f. Dealer shall not offer for sale or sell GENUINE PARTS which are in fact counterfeit.

- g. Dealer shall maintain an inventory of current PRODUCTS sufficient to ensure prompt delivery to customers and display PRODUCTS to the public during regular and customary business hours. This obligation shall be additional to, and in no way limit Dealers' obligations under Section 4 of this Agreement.
- h. Dealer agrees to uncrate, assemble, and preservice, according to E-Z-GO specifications, all PRODUCTS prior to completion of sale and before delivering any PRODUCT to an end user. Dealer specifically agrees that it will comply with all Set-Up and Pre-Delivery Instructions issued by E-Z-GO. Dealer agrees to deliver and review Product features with each retail customer in person. Dealer agrees to indemnify, defend, and hold harmless E-Z-GO for any loss or damage which results from Dealer's failure to uncrate, assemble, and preservice the PRODUCTS in accordance with E-Z-GO specifications. Dealer's pre-delivery responsibilities shall survive the termination or expiration of this Agreement.
- i. Dealer agrees to disseminate to purchasers all safety information provided by the E-Z-GO. Dealer shall review and explain to each retail purchaser (and appropriate members of his or her immediate family) the complete safety video and operator's manual. Dealer shall explain that, while local ordinances may vary, a driver's license is recommended for operation of all VEHICLEs, and explain that parents should not permit use of VEHICLEs by any person or child lacking the ability to operate it safely even with supervision. Each purchaser and each appropriate family member must practice until successfully completing the maneuvers as described in the operator's manual and safety video before leaving the dealership with the VEHICLE. Dealer shall also instruct the purchaser and his or her family to read the operator's manual, read all hang tags and decals and watch the safety video before operating the VEHICLE.
- j. Dealer agrees to inform each purchaser of his or her opportunity to receive free safety training from the Recreational Off-Highway Vehicle of America ("ROHVA"), the Specialty Vehicle Institute of America ("SVIA") and the ATV Safety Institute ("ASI").
- k. Dealer shall fully complete the warranty registration form before purchaser takes possession of any VEHICLE, including having the purchaser read the form and sign and initial it where the warranty form indicates that purchaser's signature or initials are required on the date of sale of VEHICLES and submit completed warranty registration forms electronically to E-Z-GO immediately. Dealer will, upon E-Z-GO request, provide copies of the executed owner registration forms. Dealer shall also maintain all original owner registration forms containing the original signatures of the Dealer and the Dealer's customer in paper form with Dealer's other business records. Dealer shall send all original and/or electronic copies of owner registration forms to E-Z-GO immediately upon request, at any time, including, but not limited to, upon termination, expiration or nonrenewal of this Agreement.
- E-Z-GO reserves the right to sell PRODUCT directly to end users within Dealer's
 designated PAR, to include electronic commerce and through the operation of E-Z-GO
 owned-dealerships, without incurring any liability to Dealer. The term "end users" shall
 include, but not be limited to, retail chains stores; governmental agencies, institutions or
 entities; educational or charitable institutions; rental companies, retail consumers and

commercial accounts serviced by E-Z-GO as national accounts. E-Z-GO shall have no liability to Dealer for any sales made pursuant to this paragraph.

- m. Dealer agrees to provide end-customers with manufacturer's certificate of origin (MCO) for the VEHICLE sold at the time of sale. Dealer understands and agrees that the MCO is an instrument to convey title from Dealer to end-customer and confirm vehicles sold as 'new' have no prior owners. Dealer agrees that it shall not issue any MCO for any VEHICLE except to, and in the name of, any person other than the warranty registered purchaser. Dealer understands and agrees that it shall be solely responsible for ensuring that MCOs issued to the end-customers accurately reflects the chain of ownership all VEHICLES. Dealer agrees that E-Z-GO shall have no responsibility to issue Dealer MCOs for vehicles that have been purchased from any source other than E-Z-GO.
- n. Dealer agrees to notify E-Z-GO of any changes or proposed changes in state and local laws and regulations which come to Dealer's attention concerning the manufacture and use of PRODUCTS and E-Z-GO's relationship with Dealer, and notify E-Z-GO of any matters which come to Dealer's attention indicating a concern for safety regarding the operation and use of PRODUCTS
- o. Dealer agrees to comply with all laws and regulations as may apply within the territory in which Dealer sells PRODUCTS, as applicable to this Agreement and all transactions and activities contemplated or to be performed by the Dealer under this Agreement, and shall procure and maintain all approvals, licenses, permissions, and permits necessary to the performance of its business and conduct its business in a manner so as to not bring discredit upon the reputation of the PRODUCTS or E-Z-GO.

4. STOCK INVENTORY, REPRESENTATION, AND DEMONSTRATIONS

- a. Dealer agrees to maintain a minimum model representation which shall at no time be less than the number of units reasonably established by E-Z-GO, subject to availability. In all cases, Dealer shall maintain a representative current-model year floor-model for each LINE-MAKE authorized to Dealer under this Agreement. It shall be E-Z-GO's sole right to determine minimum LINE-MAKE stocking requirements.
- b. Dealer agrees to maintain, protect from the weather and prominently display in new salable condition at each DEALER LOCATION representative models of each type of PRODUCT, which Dealer is authorized to sell hereunder.
- c. If Dealer purchases VEHICLES for use as a demonstration vehicle, Dealer agrees to adhere to the terms of E-Z-GO's Demonstration Vehicle Policies and Programs. Dealer shall be solely responsible for ensuring that all operators of demonstration vehicles adhere to all safety recommendations, including but not limited to ensuring that the operator has appropriate training, is provided with all safety equipment, and that all operators of appropriate age for use of the demonstration vehicle.

- d. If Dealer participates in a Vehicle Stocking Model program, Dealer agrees that it shall adhere to all terms of the Vehicle Stocking Model terms in conditions which are in effect. Dealer agrees and understands that failure to adhere to the terms and conditions of the Vehicle Stocking Model program, including maintenance of VEHICLE stocking levels, shall be a material breach of this Agreement and grounds for termination under Paragraph 24.c
- e. Dealer agrees to provide E-Z-GO with complete information, at E-Z-GO's request, about its inventory of PRODUCTS and agrees that E-Z-GO may share Dealer's inventory information with other authorized E-Z-GO dealers. Dealer understands that accurate reporting of inventory information is essential to the E-Z-GO's understanding of PRODUCT availability, and any misrepresentation of Dealer's current inventory shall be a material and irremediable breach of this Agreement.
- f. All claims for shortage, damaged, or defective Products which may be the responsibility of the E-Z-GO, as to which the E-Z-GO shall be the sole judge, shall be made in writing by the Dealer within 15 days after the date of delivery by the E-Z-GO or the date on which the Dealer takes possession at the E-Z-GO's plant or service depot or another authorized dealer location, as the case may be. The Dealer agrees that it will not return any Products to the E-Z-GO unless the E-Z-GO has provided written consent. Dealer acknowledges that E-Z-GO written consent is required before any Product can be returned to E-Z-GO for repurchase or credit. The Dealer further agrees that it will be responsible for and prepay all transportation charges for items returned to the E-Z-GO for repurchase or credit.

5. DEALER PERFORMANCE AND MARKETING PROGRAMS

- a. Dealer understands and agrees that its performance of its PRODUCT sales responsibility hereunder shall be measured by E-Z-GO through the use of such reasonable criteria as E-Z-GO may adopt, and without limitation, taking into consideration Dealer's total revenue associated with the sale of PRODUCTS or Dealer's unit sales to customers in the PAR. E-Z-GO may from time to time conduct surveys (by use of questionnaires or otherwise) of owners of PRODUCTS purchased from Dealer to determine the satisfaction of those owners with the sales efforts of Dealer. The results of these surveys may be taken into consideration in assessing Dealer's performance under this Agreement.
- b. Dealer understands and agrees that E-Z-GO has the right, in its sole discretion, to advertise the performance of authorized dealers to the general public, and to award dealers performance grades based on dealers' performance against objective performance criteria which E-Z-GO may publish from time to time. Dealer agrees that the publication of such awards, grades, or tiers as a comparative measure of expected service is a necessary and reasonable component of this Agreement in order to inform prospective customers of the expected level of service available at a dealership.
- c. Dealer understands and agrees that E-Z-GO may make available certain tools, programs and privileges to Dealers conditioned on meeting certain objective criteria, or pursuant to specific methodology as provided by E-Z-GO to Dealer in writing. Dealer understands and agrees that marketing programs, rebates, access to tools such as the E-Z-GO Dealer Locator

- or other such manufacturer advertising, or the waiver of fees associated with such tools or programs are not a right provided under this Agreement and are made available at E-Z-GO's sole discretion.
- d. Dealer specifically agrees that it will comply with the terms of E-Z-GO's Minimum Advertised Price (MAP) Policy. Dealer understands and agrees that compliance with the MAP Policy is a reasonable and material provision of the Agreement and that failure to comply with MAP Policy shall be grounds for termination under Paragraph 24.c.

6. SERVICE RESPONSIBILITY

- a. General. In accordance with standards and procedures established from time to time by E-Z-GO, Dealer agrees to develop, maintain and direct a sufficient number of trained and competent service mechanics and technicians necessary to render prompt, professional and courteous service to owners and users of the PRODUCTS at the DEALER LOCATION, at any BRANCH LOCATION, and in the field. In order to maintain quality control, E-Z-GO may, in its sole discretion, provide certification programs available to individuals rather than dealerships to ensure appropriate levels of familiarity and expertise in the use of specialized tools or procedures. Dealer understands and agrees E-Z-GO may restrict access and use of certain specialized tools to only appropriately certified personnel, and Dealer agrees to enforce such restrictions among its employees. Dealer acknowledges that maintaining qualified service personnel, who have completed service training and all updates of service training, is reasonable and necessary.
- b. Pre-delivery. Dealer shall perform all initial PRODUCT set-up and support activities as determined by E-Z-GO. Dealer agrees to assemble, set-up and inspect PRODUCTS to ensure that they are in suitable operating condition prior to delivery to any qualified end user. In accordance with instructions issued from time to time by E-Z-GO, Dealer agrees to perform inspection, conditioning and repair of PRODUCTS before delivery to a purchaser. Dealer's pre-delivery responsibilities shall survive the termination or expiration of this Agreement.
- c. Warranty and Policy. Dealer must perform warranty service on PRODUCTS sold by Dealer in accordance with the MANUAL. At the customer's request, Dealer shall perform warranty and policy service on PRODUCTS not originally sold by Dealer. Warranty claims must be submitted electronically to company within ten (10) days from the date of completion of the repair.
- d. Campaigns. Dealer agrees to perform campaign and field improvement program (FIP) inspections and make corrections for owners and users of PRODUCTS in accordance with instructions by E-Z-GO and the provisions of the MANUAL. In no case shall Dealer sell any PRODUCT subject to an FIP without first performing the required inspections and corrections.
- e. Parts; Stocking. Dealer agrees to purchase and maintain at all times an adequate stock of GENUINE PARTS in order to provide reasonable and prompt service and repairs to the PRODUCTS.

- f. Parts; Priority. Except as otherwise instructed by E-Z-GO, Dealer agrees to use only GENUINE PARTS in performing warranty, campaign and FIP work. Further, Dealer agrees to use only GENUINE PARTS when performing repair or refurbishment work on E-Z-GO PRODUCTS, unless otherwise specifically requested by the customer. Dealer shall give priority to warranty, campaign and FIP work over other service work if the customer's use of the PRODUCTS submitted for warranty, campaign, or FIP work is impaired.
- g. Parts; Non-E-Z-GO Parts. If Dealer repairs a Product using accessories, subassemblies, components or other parts that are not sold by E-Z-GO, Dealer must inform the customer in writing that it has repaired the Product with accessories, subassemblies, components or other parts that are not sold or approved by the E-Z-GO, that the use of such other parts, accessories, subassemblies, components, or modifications may make the vehicle unsafe, and that any such part, subassembly, component, or modification is not included in the warranty provided by E-Z-GO.
- h. Service Tools. Dealer agrees to keep in inventory all special tools required by E-Z-GO to service the PRODUCTS.
- i. Use of GENUINE PARTS with Non-E-Z-GO Vehicles. E-Z-GO has determined that GENUINE PARTS may not be used in conjunction with certain Non-E-Z-GO Vehicles (the "LISTED VEHICLES") because the safety profile of the LISTED VEHICLES is either unknown or unproven and the compatibility of the GENUINE PARTS with the LISTED VEHICLES is either unknown or unproven. E-Z-GO will maintain a list of such LISTED VEHICLES, which will be made available to Dealer upon request. Dealer agrees that it will not install GENUINE PARTS on any LISTED VEHICLES, use GENUINE PARTS to repair or refurbish any LISTED VEHICLES, or sell or offer for sale GENUINE PARTS in connection with any LISTED VEHICLES.
- j. Unauthorized Modification; Dealer may not modify any PRODUCTS without the written consent of E-Z-GO.
- k. Recall Obligations. Dealer agrees to promptly notify all applicable purchasers in the event of a recall and make any and all repairs required in connection with the recall. Dealer shall comply with all procedures specified in safety bulletins, service bulletins and/or any other documentation provided by the E-Z-GO regarding any recall. Dealer agrees to indemnify and hold harmless E-Z-GO against all losses, costs and attorney fees sustained by E-Z-GO in the event of Dealer's failure to comply with this provision.

7. NOTICE, APPROVAL AND CONSENT

Any notice, approval or consent required or allowed under this Agreement shall be given in writing and, without prejudice to other forms of actual service, shall be considered as served upon being mailed in a properly sealed envelope with first class or certified or registered postage prepaid. Notices to E-Z-GO shall be mailed to E-Z-GO, 1451 Marvin

Griffin Road, Augusta, Georgia 30906. Notices to Dealer shall be delivered or mailed to Dealer at the PRINCIPAL DEALER LOCATION.

8. ORDERS

- a. Dealer shall submit orders for PRODUCTS to E-Z-GO at times designated by E-Z-GO and using methods and forms required by (or approved by) E-Z-GO.
- b. E-Z-GO shall make reasonable efforts to honor each order for PRODUCTS from Dealer accepted by E-Z-GO, but shall not be liable for failure to deliver or delay in delivery of PRODUCTS.
- c. Orders for PRODUCTS are deemed to be accepted by E-Z-GO when the order is expressly confirmed by E-Z-GO or the ordered PRODUCTS are delivered to Dealer or the carrier.
- d. All sales of PRODUCTS to Dealer are final, and Dealer shall accept all PRODUCTS ordered by it, whether such orders are given to E-Z-GO by telephone, fax, letter, e-mail, purchase order, oral order or other communication. Further, Dealer is not authorized to cancel or return any order accepted by E-Z-GO without E-Z-GO's prior written authorization.
- e. Notwithstanding passage of title, E-Z-GO shall have all security and other rights permitted by law, including, without limitation, the right of rescission, stoppage in transit and resale.

9. PRICES AND CHARGES

Unless otherwise determined by E-Z-GO, the following provisions shall apply:

- a. Dealer shall pay E-Z-GO the DEALER PRICE as set forth in the PRODUCT AND PRICING PROGRAM for each PRODUCT purchased from E-Z-GO by Dealer, plus any charges by E-Z-GO for reimbursement of taxes, duties, transportation, handling, distribution, delivery or special items or services. E-Z-GO may change the DEALER PRICE, holdback, reimbursement and other charges at any time prior to acceptance of the order without prior notice to Dealer. Delivery to Dealer shall be deemed made and the order filled, on the date of delivery by E-Z-GO to the carrier or to Dealer, whichever occurs first.
- b. Notwithstanding anything to the contrary contained herein, if E-Z-GO increases the DEALER PRICE for any PRODUCT, Dealer may cancel, by written notice to E-Z-GO within ten (10) days after receipt of notice of the increase, any orders for that PRODUCT placed by Dealer prior to receiving notice of the increase and not already accepted by E-Z-GO at the time E-Z-GO receives Dealer's notice of cancellation.

10. TERMS OF PAYMENT AND DELIVERY

Unless otherwise determined by E-Z-GO by written notice to Dealer, the following provisions shall apply:

- a. Payment. Payment for each PRODUCT shall be made in current funds unless the invoice or E-Z-GO's then current and applicable payment plan provides otherwise, in which event the terms of the invoice or the plan shall govern. Dealer shall pay E-Z-GO for all PRODUCTS immediately upon delivery of PRODUCTS to the carrier or Dealer, whichever occurs first. Receipt of any check, draft or other commercial paper shall not constitute payment until E-Z-GO has received cash in the full amount thereof. Failure to make payment in accordance with this paragraph may, at the discretion of E-Z-GO, result in E-Z-GO revoking the sale and repossessing the PRODUCT without notice or formality or result in a charge back or disallowance of discounts and/or settlement allowances. These remedies are in addition to those available to E-Z-GO under Paragraphs 24.c and .d.
- b. Delivery. Delivery of all VEHICLES shall occur FCA E-Z-GO's facility (Incoterms 2010) unless otherwise agreed to in writing. Delivery of Products by E-Z-GO to any carrier for transportation to Dealer shall constitute delivery to Dealer and Dealer shall bear all risk of loss or damage to Products thereafter. All costs of carrier insurance shall be the responsibility of the Dealer. E-Z-GO reserves the right to determine the method and routing for delivery of PRODUCTS sold to Dealer. Where specific shipping instructions are not stated in the order, E-Z-GO will endeavor to ship the PRODUCTS to Dealer over the best and most economical route. E-Z-GO shall not be responsible for guaranteeing shipping rates or for delays in shipments. Dealer must provide two weeks advance notice of any closings or modifications to standard hours of operation that may affect Product deliveries.
- c. Security. No cash discount will be allowed Dealer while any indebtedness, whether secured by collateral or otherwise, is past due. Further shipments of PRODUCTS may be stopped altogether or made only on a cash basis. Dealer shall be charged and must pay interest on all accounts past due at the highest lawful rate. Dealer shall reimburse E-Z-GO for any collection charges, including reasonable legal fees, in connection with any past due accounts.
- d. Title. Title to each PRODUCT purchased by Dealer shall pass to Dealer or to the finance institution designated by Dealer once payment is received.
- e. Risk of Loss and Claims. All risk of loss and damage to any PRODUCT purchased by Dealer from E-Z-GO shall be the responsibility of Dealer. E-Z-GO shall cooperate with Dealer in processing all claims for loss of or damage to PRODUCTS. Dealer shall bear all risk of loss or deterioration of, or damage to, PRODUCTS from the time delivery is tendered to Dealer. Dealer shall promptly notify E-Z-GO if any PRODUCTS are substantially damaged while in Dealer's possession.

- f. Demurrage and Diversion Liability. Dealer shall pay all demurrage, storage and other charges accruing after arrival of any shipment of PRODUCTS at the designated destination. If Dealer fails or refuses for any reason to accept delivery of any PRODUCTS ordered by Dealer, Dealer shall pay E-Z-GO the amount of all expenses incurred by E-Z-GO in shipping PRODUCTS to Dealer and in returning PRODUCTS to the original shipping point or diverting them to another destination.
- g. Taxes. Dealer represents and warrants that all PRODUCTS purchased from E-Z-GO are purchased for resale to customers in the ordinary course of Dealer's business. Dealer further represents and warrants that it complies with all requirements for collection and payment of applicable sales, use and like taxes, and has provided or will provide evidence thereof to E-Z-GO. These representations and warranties shall be deemed a part of each order given by Dealer to E-Z-GO. Dealer agrees that, as to any PRODUCT put to a taxable use by Dealer or purchased by Dealer other than for resale, Dealer shall make timely and proper return and payment of all applicable sales, use and other taxes, and shall indemnify, defend and hold E-Z-GO harmless from all claims and demand for those taxes.
- h. Application of Money and Credits. Any money or credits due and payable or becoming due and payable from E-Z-GO to Dealer as a result of the business dealings between the parties may, at E-Z-GO's option, be applied in any order E-Z-GO may determine for the satisfaction, in full or in part, of any debts, liabilities or obligation due and payable or becoming due and payable or owing from Dealer to E-Z-GO, including, but not limited to past due interest due from Dealer to any financing organization for which E-Z-GO may be responsible to pay in the future.
- i. UCC. A UCC filing and security agreement will, at E-Z-GO's option, be completed for all accounts and credit extended to the Dealer.

11. ADVERTISING, PROMOTION AND TRADE PRACTICES

- a. Dealer shall refrain from business practices, advertisements and promotions that are unethical, deceptive, misleading, confusing or would likely contravene any voluntary or involuntary advertising standard or any law. Dealer shall not make directly or indirectly any false or misleading statement or representation concerning any PRODUCT or other item held for sale.
- b. Dealer shall comply with all laws, rules and regulations applicable to the titling, ordering, sale and service of PRODUCTS, including without limitation those concerning safety, emissions control and customer service. With further regard to used PRODUCTS which come into its possession, Dealer agrees to inspect such PRODUCTS and bring them up to reasonably safe condition before sale.

12. LITERATURE AND INSTRUCTION

- a. Dealer agrees to deliver current operation, maintenance, and warranty publications, manuals and forms to each purchaser of a PRODUCT.
- b. At the time of delivery, Dealer agrees to instruct each purchaser how to safely use and operate the PRODUCT.

13. CUSTOMER HANDLING

Dealer shall promptly investigate and take appropriate corrective action to satisfy the purchaser with respect to all matters brought to its attention relating to the sale and service of the PRODUCTS, and shall promptly report to E-Z-GO the details of each inquiry or complaint that Dealer cannot correct to the purchaser's satisfaction. Dealer shall also promptly notify E-Z-GO of any reports of accidents or injuries involving PRODUCTS.

14. FACILITIES

- a. Dealer shall establish and maintain at a location approved by E-Z-GO a place of business that in E-Z-GO's opinion:
 - (i.) is of satisfactory size, layout, appearance and condition;
 - (ii.) contains adequate space for display, sale and service of PRODUCTS, customer parking, customer waiting, office functions and storage; and
 - (iii.) is equipped to E-Z-GO's sole satisfaction in such manner as to enable Dealer to meet its obligations under this Agreement.
- b. Upon receipt of written approval from E-Z-GO, Dealer may establish and maintain BRANCH LOCATIONS for the sale and/or service of PRODUCTS. All requirements set forth in this Agreement, including but not limited to those set forth in Paragraph 14(a), shall apply to all BRANCH LOCATIONS.
- c. Without the prior written consent of E-Z-GO, Dealer shall not move or substantially modify its place or places of business or establish, directly or indirectly, any other place of business, including BRANCH LOCATIONS, for the sale or service of PRODUCTS.
- d. Dealer shall keep its place or places of business open during all hours and days customary in the trade.
- e. The Dealer shall set up and use at each DEALER LOCATION an E-Z-GO approved computerized system for communications with E-Z-GO.

15. WARRANTY

- a. The warranties covering the LINE-MAKES are set forth in the MANUAL. **DEALER SHALL REVIEW THE WRITTEN WARRANTY SET FORTH IN THE MANUAL WITH THE CUSTOMER AND REGISTER THE PRODUCTS.** Dealer shall also provide customer information for each PRODUCT sold by Dealer as requested by E-Z-GO for the purposes of, but not limited to, the warranty record. E-Z-GO and Dealer promptly shall fulfill their responsibilities under this warranty.
- b. EXCEPT FOR THE WARRANTY EXTENDED UNDER THIS SECTION 15, E-Z-GO MAKES NO REPRESENTATION OR WARRANTY OF ANY OTHER KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS OTHER THAN THAT SET FORTH IN THE E-Z-GO WARRANTY FOR THAT E-Z-GO PRODUCT, WHETHER AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER MATTER. THE REMEDIES SET FORTH IN THE E-Z-GO WARRANTY SHALL BE THE ONLY REMEDIES AVAILABLE TO ANY PERSON. UNDER NO CIRCUMSTANCES SHALL E-Z-GO BE SUBJECT TO ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONTINGENT DAMAGES WHATSOEVER, RELATED TO OR ARISING OUT OF THE E-Z-GO WARRANTY OR THE USE OF E-Z-GO PRODUCTS, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHER THEORY OF LAW, ALL SUCH DAMAGES AND CLAIMS BEING SPECIFICALLY DISCLAIMED.
- c. Neither Dealer nor any other person shall have authority to bind E-Z-GO to any other representation or warranty. Dealer shall indemnify E-Z-GO, for all losses, damages, liabilities or expenses (including but not limited to reasonable attorneys' fees and litigation costs) to which E-Z-GO may be put as a result of any claim under said warranty by reason of any defect caused by any act or omission of Dealer, its employees or agents, or as a result of any claim based upon a different warranty given or purported to be given by Dealer, its employees or agents. Dealer agrees to comply with all its obligations set forth in the E-Z-GO warranty.
- d. E-Z-GO shall not be liable, nor shall it defend, indemnify or in any way be obligated to assist Dealer in defense of any notice, claim, or lawsuit alleging the existence of a warranty beyond the terms identified in the Warranty.
- e. The performance and administration of the warranties extended under this Section 15 and the payment of claims under these warranties shall be as set forth in the MANUAL.

16. INSURANCE

a. The Dealer shall acquire and maintain at its sole cost and expense throughout the term and any renewal of this Agreement the following types of insurance issued by insurers that possess a minimum Best rating of 'A-', reasonably acceptable to E-Z-GO, and licensed to operate in each state where this Agreement applies:

- (i.) Workers' compensation statutory limits;
- (ii.) Commercial General Liability- with minimum limits of \$5,000,000 per occurrence and in the aggregate; coverages shall include but not be limited to premises liability, product liability, and advertising liability. E-Z-GO shall be named as an additional insured;
- (iii.) Business Automobile with minimum limits of \$2,000,000 per occurrence covering Dealer's owned, leased, and rental vehicles, as well as non-owned vehicle; and
- (iv.) Property replacement coverage basis and to protect the interests as they may appear of E-Z-GO.
- b. The Dealer shall furnish to E-Z-GO original certificates of insurance that complies with this Section 16. Deductibles and self-insured retentions remain the sole responsibility of the Dealer. The Dealer's insurance coverage shall not contain exclusion clauses (*i.e.*, barring cross-claims or cross-suits) which would preclude E-Z-GO, as an additional insured, from instituting causes of action against other insureds, or otherwise limit E-Z-GO's protections as an additional insured. Dealer shall provide reasonable notice to E-Z-GO, at least thirty (30) days, prior to the cancellation, expiration or material modification of any insurance policy referenced in this Section 16.
- c. Dealer's insurance shall apply on a primary basis; any insurance of E-Z-GO's shall be considered noncontributory.
- d. Dealer may use a combination of commercial general liability insurance and umbrella/excess liability insurance to achieve the minimum limit of liability insurance as stated in Paragraph 16.a
- e. Failure of the Dealer to comply with this Section 16 shall be considered a material default.

17. CREDITLINE AND CAPITALIZATION

- a. Dealer shall at all times employ in connection with its business under this Agreement a wholesale line of credit acceptable to E-Z-GO and the total investment, net working capital, and financing plans, in the amounts deemed necessary by E-Z-GO for Dealer to comply with its obligations hereunder.
- b. Dealer shall comply fully with the terms of any wholesale line of credit applying to sales made to Dealer, and Dealer shall make no sale or other disposition of floor planned

PRODUCTS other than by normal course of business sale to a bona fide purchaser, or by wholesale transfer to another authorized E-Z-GO Dealer.

18. SIGNS

Dealer shall acquire, erect and maintain an E-Z-GO-approved primary identification sign to identify each DEALER LOCATION as a Dealer in PRODUCTS. These signs shall be subject to E-Z-GO's approval with respect to the display of any trademark or trade name to which E-Z-GO or any affiliated company is entitled.

19. REPORTS, AUDITS AND RECORDS

- a. At E-Z-GO's request, Dealer shall provide to E-Z-GO a copy of its annual and/or current monthly financial statement prepared by or for Dealer in accordance with generally accepted accounting principles. Dealer shall also promptly submit sales reports and other business, sales and service reports and documents to E-Z-GO upon request. All statements and reports shall contain information on any BRANCH LOCATIONS. At any time, E-Z-GO may request from Dealer additional or supplemental financial or other business data to assist in assessing its continuing credit risk or Dealer's compliance with the provisions of this Agreement. E-Z-GO also reserves the right to obtain from time to time personal financial statements from the owner(s), partner(s), principal stockholder(s) or guarantor(s) of Dealer. Dealer will comply with all requests for such additional information immediately. Failure to provide any of the reports, records or information which are the subject of this paragraph may result in withdrawal of existing credit extensions or refusal to grant additional credit or such other actions as E-Z-GO may deem appropriate, including termination of this Agreement as provided herein.
- b. Dealer shall permit persons designated by E-Z-GO, at reasonable times during normal business hours, to examine its place or places of business, stocks of PRODUCTS at the PRINCIPAL DEALER LOCATION and any BRANCH LOCATIONS, to check and instruct Dealer and its employees in the proper handling of warranty and other repairs and claims based thereon and to examine, copy and audit all Dealer's original records and documents relating to Dealer's business as described herein. Dealer shall maintain for at least two (2) years all original records and documents relating to all claims made upon or paid by E-Z-GO including, but not limited to, warranty, policy and incentive claims. The submission of improper claims will result in a charge back against Dealer's account with E-Z-GO for all improper or unsubstantiated claims. If Dealer refuses to permit an audit, fails to maintain the required records, or if it is determined that improper claims were intentionally made, the charge back will include all payments for the prior two (2) years, including any dealer settlement allowances or sales incentives. This remedy is in addition to those available to E-Z-GO under Paragraph 24(d).

20. E-Z-GO REPRESENTATION

a. Without liability to Dealer, E-Z-GO may determine the numbers, locations and sizes of E-Z-GO dealers necessary for adequate sales and service representation within any

geographic area, or within the PAR, and may alter Dealer's designated PAR or appoint additional E-Z-GO dealers in PRODUCTS within that PAR or elsewhere. Notwithstanding any other provision of this Agreement, the decision whether to alter Dealer's designated PAR or to establish a new or additional E-Z-GO Dealer shall be made by E-Z-GO solely upon its own business judgment. Nothing in this Agreement shall be construed as requiring Dealer's consent to the establishment of a new or additional Dealer in any area where the Dealer markets or sell PRODUCTS or elsewhere.

- b. E-Z-GO may make gifts or loans of PRODUCT to purchasers within Dealer's designated PAR or otherwise without liability to Dealer. E-Z-GO may also offer PRODUCTS, including new, modified and differently designed PRODUCTS, bearing any trademarks or tradenames to which E-Z-GO or any other company is entitled, to selected E-Z-GO Dealers or others under existing or new agreements without liability to Dealer, and without undertaking any obligation to make such PRODUCTS available to the Dealer.
- c. The rights and privileges conferred to Dealer under this Agreement are not transferable, assignable or salable by Dealer, and no property right or interest, direct or indirect, is sold, conveyed or transferred to Dealer under this Agreement. E-Z-GO may select the dealers it shall appoint to distribute and service PRODUCTS, and may refuse to appoint as a Dealer any purchaser or prospective purchaser of any of the shares or assets of Dealer upon the termination of this Agreement or otherwise. Dealer shall give E-Z-GO sixty (60) days written notice of Dealer's intention to transfer or sell the shares or assets of the dealership.
- d. Dealer has not paid any fee for this Agreement.

21. MODEL CHANGE

Without giving notice to Dealer and without incurring any liability to Dealer, E-Z-GO:

- a. may alter, modify or discontinue the design, construction and availability of any PRODUCT;
- b. may discontinue availability in the PAR of any PRODUCT, any derivative of a PRODUCT and any version of any derivative of a PRODUCT; and
- c. may market additional or replacement PRODUCTS.

22. TRADEMARKS, TRADE NAMES AND TRADE SECRETS

a. E-Z-GO hereby grants to Dealer permission to use the trademarks and tradenames used by E-Z-GO in connection with the advertising and sale of the PRODUCTS (the "Trademarks"). Without E-Z-GO's prior consent, Dealer shall not use any Trademarks

owned or used by E-Z-GO or any predecessor or affiliates, as or as part of Dealer's firm, trade or corporate name and shall not permit any person, firm or corporation controlled by it or affiliated with it to do so. Such Trademarks belong to E-Z-GO or its affiliates, and any such use by Dealer shall immediately cease upon termination of the business relationship between E-Z-GO and Dealer.

- b. When using E-Z-GO's Trademarks, Dealer shall not misspell or modify the Trademarks, and shall give notice that the Trademarks are owned by E-Z-GO. Any use of E-Z-GO's Trademarks must be pre-approved by E-Z-GO in writing. E-Z-GO can reject the use of E-Z-GO's Trademarks by Dealer for any reason deemed sufficient by E-Z-GO. E-Z-GO retains the right, at any time, to further restrict or eliminate the use of its Trademarks by Dealer.
- c. E-Z-GO assumes no obligation of any kind with respect to information regarding new products and/or product concepts provided to it by Dealer, whether the information is in oral or written form. Dealer agrees that all such submissions are on a voluntary, unsolicited, and non-confidential basis and that it seeks no remuneration from E-Z-GO for such submission. Dealer understands that, E-Z-GO, may use any idea disclosed to it by Dealer for any purpose whatsoever and may disclose any such idea to third parties, and Dealer agrees that it neither has nor will assert any claim of ownership in any information so disclosed or any commercial embodiment of such idea that E-Z-GO ultimately may create. All claims of any nature, including, but not limited to, any claims for theft and/or misappropriation of trade secrets, patent infringement, etc., arising out of Dealer's submission to E-Z-GO, are hereby waived, and Dealer releases E-Z-GO from any such claim and covenants not to sue for any such claim.
- d. Dealer specifically acknowledges that it needs to obtain written permission from E-Z-GO to use E-Z-GO Trademarks for any internet advertising, including internet search engines, regarding Dealer.
- e. Dealer's use of any E-Z-GO trademark as part of a domain name must comply with the guidelines set forth in E-Z-GO's Internet Trademark Policy. All Dealer domain names must be pre-approved by E-Z-GO, in writing, prior to use, subject to E-Z-GO's sole discretion.
- f. Dealer shall not in any trading title used by the Dealer in connection with its business activities under this Agreement or in connection with any other business activity, use any name or words capable of damaging the goodwill or reputation of E-Z-GO or any affiliated company or predecessor. Dealer shall promptly carry out all reasonable instructions and requests of E-Z-GO issued to protect and promote the value, goodwill and reputation of any trademark or trade name to which E-Z-GO or any affiliated company or predecessor is entitled.
- g. Dealer hereby acknowledges the importance of the Trademarks to E-Z-GO and its affiliates, and agrees that E-Z-GO and its affiliates may institute appropriate proceedings against Dealer to enforce its rights hereunder. Dealer further acknowledges and agrees that E-Z-GO and its

affiliate companies will suffer irreparable harm from, and that money damages would not be a sufficient remedy for, any violation of the terms of this Section 22. Accordingly, Dealer agrees that E-Z-GO and its affiliates companies shall be entitled, without the requirement of posting a bond or other security, to seek equitable relief, including specific performance and injunctive relief as remedies for any violation. These remedies shall not be deemed to be the exclusive remedies for a violation of the terms of this Section 22, but shall be in addition to all other remedies available to E-Z-GO and its affiliate companies at law or in equity.

23. DURATION

Unless terminated earlier in accordance with the terms hereof, this Agreement shall continue from the date first set forth above until December 31, 2023. Dealer understands that this Agreement is of a limited duration and agrees that it has not relied on any representation regarding the continuation of this Agreement or its benefits beyond the initial term.

24. TERMINATION

It is agreed that the following shall illustrate, but in no way limit, the various grounds which shall entitle E-Z-GO, at its option, and Dealer where so indicated, to terminate this Agreement prior to its expiration, and which shall entitle E-Z-GO to immediate possession of all PRODUCTS for which Dealer is indebted to E-Z-GO or a E-Z-GO approved financing institution:

- a. Replacement Agreement. In the event E-Z-GO offers a new or amended form of the Agreement, E-Z-GO may terminate this Agreement at any time by giving Dealer at least thirty (30) days prior written notice.
- b. At Will. E-Z-GO may terminate this Agreement at any time, with or without cause, after at least one hundred and eighty days (180) days prior written notice to the Dealer.
- c. Breach. Except for those events set forth in Paragraph 24(d), E-Z-GO shall give the Dealer notice and ninety (90) days opportunity to cure, to E-Z-GO's sole satisfaction, any failure of the Dealer to fulfill any of its obligations under this Agreement. If Dealer fails to cure the breach or breaches to E-Z-GO's sole satisfaction, E-Z-GO may terminate this Agreement by giving Dealer ten (10) days written notice.
- d. With Immediate Effect. E-Z-GO may terminate this Agreement with immediate effect by giving notice to Dealer or to Dealer's legal representative in any of the following events:
 - (i.) Any transfer or attempted transfer, without the prior written approval of E-Z-GO, by Dealer of any interest in, or right, privilege, or obligation under this Agreement, or any transfer by operation of law or otherwise of the principal assets of the Dealer that are required for the conduct of its business under this Agreement, or any change, however accomplished, in the direct or indirect ownership or operating management of Dealer;

- (ii.) Any misrepresentation in applying for appointment as a dealer in PRODUCTS by Dealer; the submission of a fraudulent parts return or the return of parts with fraudulent packaging or labeling; the submission by Dealer to E-Z-GO of a false or fraudulent application or claim, or any false statement in support thereof, for warranty, policy or campaign adjustments or for wholesale parts or sales incentives or for any other refund, credit, rebate, incentive, allowance, discount, reimbursement or payment under any program, or the acceptance by Dealer of any payment for any work not performed by Dealer in accordance with the provision of this Agreement or the MANUAL;
- (iii.) Failure of Dealer to maintain one or more of Dealer's places of business open for business for a period of seven (7) or more consecutive days;
- (iv.) Conviction or guilty plea in a court of original jurisdiction of Dealer of a felony or of any violation of law that in E-Z-GO's opinion tends to adversely affect the operation or business of Dealer or the good name, goodwill or reputation of Dealer, E-Z-GO, or other dealers in PRODUCTS;
- (v.) Failure of Dealer to fulfill any provision of Section 10 or Section 17 or to pay E-Z-GO any sum due under any agreement between E-Z-GO and Dealer;
- (vi.) Death or physical or mental incapacity or disappearance of Dealer if Dealer is an individual, or of the principal owner of Dealer if Dealer is a legal entity other than an individual;
- (vii.) Insolvency of Dealer; the inability of Dealer to pay debts as they mature, whether to E-Z-GO or others; the filing of a petition in bankruptcy or for reorganization, whether voluntary or involuntary; the making of an assignment by Dealer for the benefit of creditors; the appointment of a receiver, custodian or trustee for Dealer or its property; or default by Dealer in the payment of any obligation owing to E-Z-GO;
- (viii.) Revocation or discontinuance of any guaranty of Dealer's present or future obligations to E-Z-GO;
- (ix.) Failure of Dealer to provide the reports and/or permit the audits described in Section 19;
- (x.) Any conduct by any employee of Dealer unbecoming a reputable business person, or disagreement between any persons named therein that in E-Z-GO's opinion tends to adversely affect the operation or business of

- Dealer or the good name, goodwill or reputation of PRODUCTS, Dealer, E-Z-GO, or other dealers in PRODUCTS; or
- (xi.) Conduct by any employee of Dealer that is abusive or threatening to any E-Z-GO employee.
- e. By Mutual Consent. Dealer's appointment may be terminated by mutual consent of Dealer and E-Z-GO, evidenced by a writing signed by Dealer and E-Z-GO with the effective date of such termination to be as mutually agreed upon in writing.

25. OBLIGATIONS UPON EXPIRATION OR TERMINATION

- a. Upon the expiration or termination of this Agreement, Dealer shall cease to be a dealer in PRODUCTS, all orders from Dealer for PRODUCTS that have not been shipped shall be canceled without liability to either party, and Dealer promptly shall:
 - (i.) pay E-Z-GO all sums owed by Dealer to E-Z-GO;
 - (ii.) remove all signs owned or controlled by Dealer that bear any trademark or trade name of E-Z-GO or any of its affiliates or predecessors;
 - (iii.) discontinue the use of any trademark or trade name of E-Z-GO or any of its affiliates or predecessors; and
 - (iv.) cease to represent in any way that Dealer continues to be a Dealer in PRODUCTS.
- b. If Dealer fails to comply with these requirements, E-Z-GO may take reasonable steps to achieve compliance or the same result as would be realized by Dealer compliance and Dealer shall reimburse E-Z-GO for all costs and expenses, including reasonable attorney's fees, incurred by E-Z-GO in effecting or enforcing compliance. All obligations contained in Section 25 shall survive the expiration or termination of this Agreement. Final settlement of Dealer's account with E-Z-GO shall not be made until all requirements of this Agreement, particularly those obligations set forth in Paragraph 25.a(i.) are complied with by Dealer.
- c. Dealer understands and agrees that failure to remove any sign bearing any trademark or tradename of E-Z-GO following termination of this Agreement is likely to cause confusion to E-Z-GO's existing and potential customers, and shall cause real and cognizable damage to E-Z-GO.

26. ACQUISITION OF CERTAIN PROPERTY UPON TERMINATION

a. Upon termination of this Agreement, E-Z-GO shall have the right, but not the obligation, to repurchase all or any portion of the new, current, in original packaging, undamaged, saleable, and unused (no gas or oil shall have been added) PRODUCTS that Dealer

purchased from E-Z-GO pursuant to this Agreement. Such PRODUCTS may be repurchased by E-Z-GO pursuant to the terms of E-Z-GO's current buy back policy, the terms of which may change from time to time. Dealer shall furnish E-Z-GO a complete inventory of such PRODUCTS Dealer wishes E-Z-GO to consider for possible repurchase within thirty (30) days after termination of this Agreement. For PRODUCTS Dealer wishes E-Z-GO to consider for possible repurchase, the inventory listing must be provided after the effective date of termination and in a legible format, include product descriptions, the quantity of each item, the prices Dealer paid E-Z-GO for such product, and for units, the serial number, model and designation of whether the unit is still under financing. Any inventory listing of parts, accessories, units, tools, or any other item for possible repurchase must be provided to E-Z-GO in an electronic format in the form of an Excel or other electronic spreadsheet. Handwritten inventory lists and other lists in a non-electronic format (e.g., type written) will not be accepted. E-Z-GO will provide an acceptable Excel template upon request. Dealer's failure to provide the inventory listing in an appropriate format will result in a per-line item processing charge of \$25.00 USD, the aggregate total of which shall be offset against any buyback total otherwise owed to Dealer. If E-Z-GO has agreed in writing to repurchase units, Dealer acknowledges that E-Z-GO has no responsibility for any floorplan finance charges accruing on the agreed-upon units to be repurchased. Dealer agrees that any illuminated dealer signs which were leased to Dealer by E-Z-GO, bearing Trademarks of E-Z-GO shall be returned to E-Z-GO upon Termination and Dealer retains no rights, after termination or nonrenewal of this Agreement, to the use of such signs and agrees that E-Z-GO may enter the Dealer's premises to obtain such signs.

- b. Dealer shall return all PRODUCTS which E-Z-GO desires to repurchase within thirty (30) days after notification is given by E-Z-GO to Dealer. All PRODUCTS returned to E-Z-GO shall be packed and loaded by Dealer and returned to the destination or destinations specified by E-Z-GO. Any costs incurred by E-Z-GO in discharging all or any part of Dealer's obligation under this paragraph shall be deducted from any amounts owed by E-Z-GO to Dealer. Upon receipt of such PRODUCTS, E-Z-GO shall count and inspect the same and shall as soon as practicable, make payment or issue credit to Dealer for all such PRODUCTS returned which meet the requirements of this Section 26. Dealer also agrees that E-Z-GO may deduct from the payment for any repurchased PRODUCT any amount owed to E-Z-GO. Any items sent to E-Z-GO for consideration of possible repurchase and which are rejected by E-Z-GO for repurchase will be returned to Dealer only if the Dealer provides advance payment for shipping costs and E-Z-GO handling fees.
- c. All PRODUCTS, whether current or non-current are historically maintained in the E-Z-GO database and therefore, the database shall not be construed as representative of E-Z-GO's Current Parts Catalogue. For purposes of repurchase, "Discontinued Parts" and "Superseded Parts" are considered non-current and are identified in the E-Z-GO database.

27. RELATIONS AFTER EXPIRATION OR TERMINATION

Any business relations between E-Z-GO and Dealer after expiration or termination of this Agreement, whether with respect to PRODUCTS or otherwise, shall not constitute

a waiver of the expiration or termination of this Agreement or in any manner reinstate the contractual relationship that existed by virtue of this Agreement, and all such relations shall be governed by terms identical to the relevant provisions of this Agreement unless the parties execute a new agreement superseding this Agreement.

28. ASSIGNMENT

Upon notice to Dealer, E-Z-GO may assign this Agreement and any rights and obligations under this Agreement to any affiliate of E-Z-GO or to any company that succeeds to the interests of E-Z-GO. Dealer may not assign or otherwise transfer this Agreement, in whole or in part, without the written prior consent of E-Z-GO.

29. LIMITATION OF LIABILITY

- a. E-Z-GO assumes no liability to the Dealer or any third parties with respect to the performance characteristics of the PRODUCTS which have been altered, modified, or remanufactured by the Dealer, for any claimed failures or deficiencies in the performance in the PRODUCTS resulting, directly or indirectly, from such alterations, modifications or re-manufacturing by the Dealer, its agents and/or distributors, or any entity related to or doing business on the part of the Dealer. The E-Z-GO warranty shall be null and void with respect to any PRODUCTS otherwise modified.
- b. The Dealer agrees to hold harmless, defend and indemnify E-Z-GO, its affiliates and their respective officers, shareholders, employees and agents against all third party claims, liabilities, demands, judgments or causes of action, whether at law or in equity, and all costs and expenses related thereto (including, but not limited to, reasonable attorneys' fees and costs), from claims and lawsuits arising from or in relation to the Dealer's: (i) alterations, modifications or re-manufacturing of the PRODUCTS; (ii) warranties (express or implied) or warranty service; (iii) infringement, directly or indirectly, of E-Z-GO's or any affiliate's patents, copyrights, design protections or other intellectual property rights – or of the same such rights of any third party; (iv) unauthorized use of E-Z-GO's or any affiliate's trademarks, copyrights, service marks of other licensed marks – or of the same such rights of any third party, and (v) any other breach of this Agreement or applicable law. In no event will E-Z-GO ever be liable, for indirect, incidental, special, contingent or consequential damages incurred by the Dealer arising out of or related to any such breach. Except as otherwise stated, E-Z-GO agrees to provide prompt written notice to the Dealer of any such claim or lawsuit and permit the Dealer a right and option to undertake and conduct the defense of any such wholly indemnified claim or lawsuit brought against E-Z-GO; provided, however, that no settlement of any such claim or lawsuit may be entered into by the Dealer without the prior express written consent of E-Z-GO.

30. AGENCY OR EMPLOYMENT RELATIONSHIP

This Agreement does not create an agency or employment relationship between E-Z-GO and Dealer or any personnel of Dealer. Neither Dealer nor any personnel of Dealer shall:

- (i.) be considered an agent or employee of E-Z-GO;
- (ii.) act or attempt to act or represent himself directly or by implication as an agent of E-Z-GO; or
- (iii.) assume or create or attempt to assume or create an obligation on behalf of or in the name of E-Z-GO.

31. AMENDMENT AND SEPARABILITY

- a. This Agreement shall not be modified or amended except by an instrument in writing of subsequent date hereto duly executed by each of the parties. Notwithstanding anything to the contrary, any amendment executed on or after the date of this Agreement, in writing and signed by both parties shall be deemed to be part of this Agreement.
- b. If performance or enforcement of this Agreement is unlawful under a valid law of any jurisdiction where that performance or enforcement is to take place, the performance or enforcement will be modified to the minimum extent necessary to comply with any such law.

32. COMPLIANCE

- a. Dealer acknowledges receipt of a copy of Textron's <u>Code of Conduct for Supplier and Other Business Partners.</u> ("Code of Conduct") (see http://www.textron.com/assets/resources/Textron Code of Conduct Suppliers Business Partners.pdf note also that a printed version is available upon request), confirms its understanding of the provisions of the BCGs that apply to contracting parties working with Textron, and agrees to comply with those provisions in connection with its work for E-Z-GO.
- b. Dealer affirms that it has not and agrees that it will not, in connection with the transactions contemplated by this Agreement or in connection with any other business transactions involving E-Z-GO, make or promise to make any payment or transfer anything of value, directly or indirectly, (i) to anyone working in an official capacity for a government, government entity (including employees of government corporations) or public international organization; (ii) to any political party, official of a political party or candidate; (iii) to an intermediary for payment to any of the foregoing; (iv) to any officer, director, employee or representative of any actual or potential customer of E-Z-GO; (v) to any officer, director or employee of Textron Inc. or any of its affiliates; or (vi) to any other person or entity if such payment or transfer would violate the laws of the country in which made or the laws of the United States. It is the intent of the parties that no payments or transfers of value shall be made which have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks or other unlawful or improper means of obtaining business. This Paragraph shall not, however, prohibit normal

and customary business entertainment or the giving of business mementos of nominal value.

- c. The U.S. Foreign Corrupt Practices Act, similar laws of other countries where applicable (together, the "Global Anti-Corruption Laws"), and related Textron policy prohibit, among other things, Textron (including its subsidiaries) and anyone acting on its behalf to make or offer payment, promise to pay, or authorize the giving of anything of value to: (i) any officer or employee of, or any person acting in an official capacity for, a government or any department, agency or corporation thereof, or any political party, party official or candidate; or (ii) any person, while knowing or having reason to know that all or a portion thereof will be offered, given or promised, directly or indirectly, to anyone described in (i) above, for the purpose of: [a] influencing any act or decision by such person in his official capacity, or [b] inducing him to use his influence with a government to affect, either by action or inaction, any act or decision of such government to obtain or retain business for any person or secure an improper advantage. Dealer acknowledges receipt of a summary of the Global Anti-Corruption Laws (for the full text of the U.S. Foreign Corrupt Practices https://www.justice.gov/criminal-fraud/statutes-regulations). confirms understanding of the provisions of the Global Anti-Corruption Laws, and agrees to comply with those provisions and to take no action that might cause E-Z-GO to be in violation of such laws.
- d. Dealer affirms that it has disclosed to E-Z-GO that no director or direct or indirect owner of Dealer; and to the best of Dealer's knowledge, no employee or other person who will be involved in Dealer's work for E-Z-GO, is a Government Official, political party official or candidate, or a Close Family Member of such an official or candidate. In the event that during the term of this Agreement there is a change in the information required to be disclosed in this paragraph, Dealer agrees to make immediate disclosure to E-Z-GO. If, in the opinion of E-Z-GO, such change substantially detracts from or increases the risks related to its relationship with Dealer, E-Z-GO will have the right to require that the individual(s) who have the relevant relationships recuse themselves from any potential conflict of interest. If an owner of Dealer or a Close Family Member of an owner becomes a Government Official, political party official or candidate who E-Z-GO, in its discretion, determines may have influence over any aspect of E-Z-GO's business; or if such an official or candidate becomes an owner of Dealer or Close Family Member of an owner, such changes will constitute grounds for termination of this Agreement. For the purposes of this paragraph "Government Official" means any officer or employee of any government or any department, agency or instrumentality thereof, or of any government-owned or government-controlled corporation or any public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, instrumentality, corporation or public international organization. For the purposes of this paragraph, "Close Family Member" means the individual's spouse; the individual's and the spouse's parents, grandparents, siblings, children, nieces, nephews, aunts, uncles and first cousins; the spouse of any of these people; and any other individuals who share the same household with the Government Official. For any publicly-traded companies in Dealer's chain of ownership, the requirements of this paragraph apply to only owners of

five percent (5%) or more of the equity in the relevant company or who are otherwise known to Dealer as owners of the relevant company.

- e. Dealer hereby affirms that it will obtain the written approval of E-Z-GO prior to the use, retention or appointment of any subagent, sub-representative, sub-consultant or other third party sub-intermediary in connection with the services to be provided under this Agreement, and that any such sub-intermediary will be required to comply with all applicable procedures to be appointed as an authorized intermediary of E-Z-GO. Any approval of such a sub-intermediary will be conditioned on, among other things, Dealer confirming in a signed writing to be incorporated into this Agreement that the sub-intermediary satisfies and will continue to satisfy the requirements above, and E-Z-GO confirming to its own satisfaction that the information provided by Dealer and the sub-intermediary in this regard is accurate.
- f. Compensation payments will be made only by check mailed to Dealer's address as noted in this Agreement, by bank transfer to Dealer's bank account in the country of that address, or by either of these methods in the country where the compensation was earned. Checks and wire transfers will be made out in the name of Dealer. Payments to Dealer are subject to all applicable laws and regulations.
- g. In the event E-Z-GO notifies Dealer that E-Z-GO has information or belief that there may be a violation of the Global Anti-Corruption Laws by Dealer or by any subagent, sub-representative, sub-consultant or other third party sub-intermediary retained by or paid by Dealer in connection with this Agreement, Dealer agrees to respond to E-Z-GO's inquiries as to the possible violation and to grant E-Z-GO the right to audit Dealer's books, records and other relevant documentation. This obligation shall continue after the expiration or termination of this Agreement.
- h. Dealer agrees that it will, at the request of E-Z-GO certify that it has not, and to its knowledge no other person, including but not limited to every owner, director, employee, subagent, sub-representative, sub-consultant or other third party sub-intermediary of Dealer has made, offered to make, agreed to make, or authorized any payment, loan, donation or gift of money or anything else of value, directly or indirectly, to or for the benefit of any Government Official, political party, party official or candidate, or to a Close Family Member or nominee of such an official or candidate, in order to obtain or retain business, or secure any improper advantage. Dealer further agrees that should it learn of information regarding any such payment or offer, or any violation of the Global Anti-Corruption Laws or Textron's Code of Conduct in connection with E-Z-GO's business, Dealer will immediately advise E-Z-GO of such knowledge or suspicion. For the purposes of this paragraph "Government Official" means any officer or employee of any government or any department, agency or instrumentality thereof, or of any government-owned or government-controlled corporation or any public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, instrumentality, corporation or public international organization. For the purposes of this paragraph, "Close Family Member" means the individual's spouse; the individual's and the spouse's parents, grandparents, siblings, children, nieces, nephews, aunts, uncles

and first cousins; the spouse of any of these people; and any other individuals who share the same household with the Government Official.

i. Dealer accepts and acknowledges that E-Z-GO may terminate this Agreement immediately by written notice for cause, which shall include, among other circumstances: (a) material breach of any of the terms and conditions hereof; (b) fraud or misrepresentation with respect to entering into and/or the performance of this Agreement; (c) a change in the information contained in this Agreement; (d) E-Z-GO learns of circumstances that give it reason to believe that Dealer has engaged in illegal conduct or unethical business practices in connection with performance of this Agreement; or (e) Dealer or any of its owners or employees responsible for its services under this Agreement has become the target of an investigation or prosecution by any government authority for alleged corruption. Dealer shall not be entitled to receive, and hereby waives rights to, any amounts that may otherwise be owed to it under this Agreement at the time of any termination under subsection (d) of this paragraph, as well as any termination payment or compensation of any kind because of termination or non-renewal of this Agreement, and Dealer agrees that any enhancements in the value of Dealer's goodwill as a result of its relationship with E-Z-GO will inure to the benefit of E-Z-GO.

33. SUPERSESSION AND ENTIRE AGREEMENT

This Agreement terminates and supersedes all other agreements between the Dealer and E-Z-GO for the sale and service of PRODUCTS. This Agreement contains the entire agreement and constitutes the sole and exclusive agreement between the parties with respect to its subject matter. Each party acknowledges that, except as expressly stated in this Agreement, no representation, understanding, course of conduct, custom or practice in the trade, or presumption of law or fact has been made or relied upon that has induced the execution of this Agreement, or would in any way modify any of its provisions with respect to the effectiveness, duration, expiration or termination of this Agreement or the sales or profit expectancy of Dealer. Dealer has decided to become a dealer in PRODUCTS and to make the investments necessary to become a dealer solely in reliance on its own investigation, appraisal and projection of present and future conditions and expectations and not in reliance on any statements made or documents exhibited to Dealer by E-Z-GO or any affiliated company or predecessor. Dealer has read this Agreement and understands it and has had adequate opportunity to consult with legal counsel of Dealer's own choosing regarding the content and meaning of this Agreement. Dealer voluntarily has entered into this Agreement and acknowledges that each provision of this Agreement is reasonable, fair and equitable.

34. NO IMPLIED WAIVER

The waiver by either party or the failure by either party to claim a breach of any provision of this Agreement shall not constitute a waiver of any subsequent breach or affect in any way the effectiveness of that provision, unless made in writing and signed by the party to be charged.

35. DATA SECURITY

During the term of this Agreement, Dealer agrees to comply with the following data security provisions:

- a. Protected Information. Dealer acknowledges that its performance under this Agreement may involve access to confidential customer information including, but not limited to, personally-identifiable information, and/or individual financial information (collectively "Protected Information") that is subject to state or federal law/rules restricting the use or disclosure of such information. Dealer agrees to comply with all applicable federal and state laws restricting the access, use, and disclosure of Protected Information.
- b. Data Breach. Dealer agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of Protected Information, or other event requiring notification. Immediately upon the discovery of a confirmed or suspected breach of any of Dealer's security obligations, or other event requiring notification under applicable law, Dealer agrees to the following:
 - (i.) Dealer must report both orally and in writing to E-Z-GO. In no event shall the report be made more than two (2) business days after the Dealer knows or reasonably suspects a breach has or may have occurred. In the event of a suspected breach, Dealer shall keep E-Z-GO informed regularly of the progress of its investigation until the uncertainty is resolved.
 - (ii.) Dealer shall defend, indemnify, and save E-Z-GO harmless from and against any claims, actions, loss, liability, damage, costs, or expenses, including but not limited to, reasonable attorneys' fees, arising from any or all data breaches. The indemnification provided hereunder includes the full costs of forensic analysis, system remediation to eliminate the cause of the data breach, and notice to affected individuals, including, but not limited to, the services of a third-party firm.

36. CONFIDENTIALITY

During the term of this Agreement, E-Z-GO may disclose to Dealer certain information of a confidential nature ("E-Z-GO Confidential Information"). E-Z-GO Confidential Information means all know-how, drawings, blueprints, manuals, letters, notes, notebooks, sketches, formulae, memoranda, dealer pricing, sales and technical bulletins, service manuals, customer lists, agreements (including this Agreement), and all other material and specifications furnished by E-Z-GO to Dealer pursuant to or in connection with this Agreement that in any way relate to the PRODUCTS and/or E-Z-GO's business. E-Z-GO Confidential Information also means any proprietary information, technical data, trade secrets, or know-how of E-Z-GO, but does not include any of the foregoing which has become publicly known and made generally available through no wrongful act of Dealer or of others under confidentiality obligations. Dealer agrees that any and all E-Z-GO Confidential Information, whether oral or written, will remain strictly confidential. Dealer will not in any manner, directly or indirectly, disclose to any person or entity any E-Z-GO Confidential Information, unless Dealer first obtains

E-Z-GO's consent in writing. Dealer agrees that it will not use, directly or indirectly, any E-Z-GO Confidential Information without E-Z-GO's express written consent. Dealer agrees to return all E-Z-GO Confidential Information upon the termination, expiration, or nonrenewal of this Agreement. Dealer further agrees that disclosure or use of E-Z-GO Confidential Information could result in irreparable harm for which immediate injunctive relief would be warranted.

37. GOVERNING LAW

- a. The parties agree that this Agreement has been negotiated and executed in the State of Georgia, and that any and all claims or disputes that in any way arise out of or relate to this Agreement, the negotiation or execution thereof, its performance, or the breach or enforcement thereof, or any claims or disputes that in any way concern the conduct of any party in connection with this Agreement, shall hereinafter be resolved, decided and litigated exclusively either in the applicable state court in and for Richmond County, Georgia, or in the United States District Court for the Southern District of Georgia, Augusta Division. Dealer hereby irrevocably waives any right it may have to commence any action or proceeding against E-Z-GO in any other court. Dealer hereby submits to the personal jurisdiction of the aforementioned courts with respect to any claims relating to this Agreement, and irrevocably waives any rights or defenses it may have to the commencement or continuation of an action against it in the aforementioned courts based on lack of personal jurisdiction or improper or inconvenient venue. The parties acknowledge and agree that the aforementioned courts are a fair, convenient, and reasonable venue for the adjudication of any claims or disputes that may arise or exist between them. The parties agree that this clause applies to any and all claims or disputes arising from pre-contract conduct and to extracontractual claims. The parties further acknowledge that this provision is a material term of the Agreement and that neither party has fraudulently or unfairly induced or coerced the other to agree to this provision. All judgments and orders issued by the aforementioned courts against a party may be enforced by any court in any jurisdiction in which the judgment debtor or any of its assets are located.
- b. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, without regard to its conflicts of law provisions; **provided**, **however**, that nothing in this Section 37 shall be interpreted or construed to subject the relationship of the parties herein to any regulatory statute, chapter or law if that regulation would not have applied to govern the relationship but for this provision.

38. ELECTRONIC SIGNATURES.

- a. Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures.
- b. Electronic Signature means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures, pursuant to the Georgia

Uniform Electronic Transactions Act (O.C.G.A. § 10-12-1 et seq.) as amended from time to time.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the Effective Date.

E-Z-GO

DEALER

By: Maryellen Williams

Print Name: Maryellen williams

Print Name: Darren Fulce

Title: Contracts Administrator

Title: President

Date: 2/4/2021

Date: 2/3/2021

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The state of the s	DITCH MAAH	FILED							
1	Let's Rine Molorsburts inc	OTOR VEHICLE BOARD							
2	5959 Rosedale Hwy	1-24-23							
	Bakersfield, CA 93308 661-323-7433 BY	DP							
3	661-323-7435		DECEMEN						
4	Darren@lr-ms.com		RECEIVED						
5	PRO	ΓEST	JAN 2 + 2023						
6	3060(a)(1) Termination (60-day Notice of Termination)								
7			The state of the s						
8		RE	CEIVED						
9	STATE OF CALIFORNIA								
10	NEW MOTOR V	EHICLE BOARD JAN	(*)						
11		NEW MOTOR	R VEHROLL = ECARD						
	In the Matter of the Protest of	Protest No. PR - 2815	5-23						
12	Let's Ride Motorsports Inc	Protest							
13	Protestant,	[Vehicle Code section 3060]							
14	Trotestant,								
15	vs.		-						
16	Textron Specialized Vehicles Inc. ("TSV")								
17	Respondent.								
18									
19	Protestant, Let's Ride Motorsports Inc.	files this protest under the provision	n of California						
20									
21	Vehicle Code section 3060(a)(1) and alleges as								
22	1. Protestant is a new motor dealer	1. Protestant is a new motor dealer selling E-Z-GO and is located at 5959 Rosedale							
23	Hwy, Bakersfield CA. Protestant's telephone number is 661-323-7433.								
24	2. Respondent distributes/manufacturer E-Z-GO products and is the franchisor of								
25	Protestant.								
20	4. On or about December 15, 2022, Protestant received from Respondent a notice								
2	that Respondent intends to terminate its existing	ng franchise effective 60 days from	Protestant's						
	receipt of said notice.								
2	5. Protestant generally denies each	n allegation asserted in the notice s	tated to be						

reasons for termination.

- 6. Respondent does not have good cause to terminate the franchise considering the existing circumstances as stated in Vehicle Code section 3071. These circumstances include but are not limited to all of the following:
- (a) Amount of business transacted by the franchisee, as compared to the business available to the franchise.
- (b) Investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise.
 - (c) Permanency of the investment.
 - (d) Whether it is injurious to the public welfare for the franchise to be terminated.
- (e) Whether the franchise has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumers for the motor vehicles handled by the franchisee and has been and is rendering adequate services to the public.
- (f) Whether the franchisee fails to fulfill the warranty obligations of the franchisor to be performed by the franchisee.
 - (g) Extent of franchisee's failure to comply with the terms of the franchise.
- (h) Other circumstances that would support the claim that there is not good cause to terminate Protestant's franchise.
- 7. Protestant and its attorney(s) desire to appear before the Board and estimate that the hearing in this matter will take 90 days to complete.
 - A Pre-Hearing Conference is requested.

WHEREFORE, Protestant pray as follows:

- 1. That the Board (or its authorized representative) immediately advise Respondent that a timely protest has been filed;
- 2. That a hearing of the Protest is required pursuant to Vehicle Code section 3080; and,
- 3. That, pursuant to Vehicle Code section 3070 and 3071, Respondent may not terminate or refuse to continue the franchise unless and until the Board finds that Respondent has established good cause for such action.

Date: January 20, 2022

BY DONFILL

DARREN FULCE

PRESIDENT

LET'S RIDE MOTORESPORTS

NEW MOTOR VEHICLE BOARD

PROOF OF SERVICE

KERN

STATE OF CALIFORNIA

In the Matter of the Protest of

PROTEST NO. PR-2815-23

Pleading Title

Let's Ride Motorsports Inc,

Protestant,

V

Textron Specialized Vehicles Inc ("TSV")

Respondent.

I, Darren Fulce declare:

I am a citizen of the United States, a resident of Kern County, California, and over 18

years of age. My business/residence address is 5959 Rosedale Hwy, Bakersfield, California. On

January 20, 2023, in the above-entitled action, I served a copy of the attached document(s):

PROTEST-3060(a)(1) Termination

X-by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Bakersfield, California addressed as set forth below. I am readily familiar with the business' practice for collection and processing correspondence for mailing with the U.S. Postal Service. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in the affidavit.

Mr.Brenden Sullivan Textron Specialized Vehicles

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1451 Marvin Griffin Rd Augusta GA 30906 X-by transmitting via electronic mail the document(s) listed above to the person(s) at the email address(es), as set forth below on this date before 5:00 p.m. (Pacific Time) and the transmission was reported as complete and without error. Logan Fondren lfondren@textron.com DATED:20 January, 2023 Darren Fulce



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